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LEGAL EDUCATION IN FRANCE.*

"To eat one's terms" at the English bar is a phrase as familiar as household words. Reform is called for, and is, it is generally allowed, sadly required. The press of this country has just taken the subject up, and communications from various advocates of the cause have lately appeared in the columns of the *Times*, as also in those of other London journals. One correspondent of a morning journal observed, a few days since, that "the whole system of the English bar, as well as the mode of admission to it, is a disgrace to a civilized country." "A Barrister of the Inner Temple" writes in the *Times* upon compulsory legal education. "A Law Student" proposes a new system of examinations and emulation, and other innovators there are who wish the whole system to be remodelled altogether. The age we live in is, doubtless, one of mental progress and social reform. Let us, in the meantime, cross over to France and see how legal education is conducted and carried out in that country, where the bar is the stepping-stone to every elevated position, whether administrative, commercial, financial, or legislative, under Government. Our starting point shall be Paris.

There are five special categories of *étudiants*, civil students, in Paris — that is, young men who have already passed through their collegiate courses of Latin and Greek,

* From the *London Times*.

history, philosophy, &c., who repair thither from the four cardinal points of France, and go through a round of special studies to enable them to enter upon a profession, whether it be science, literature, medicine, theology, or the law, the last of which is the most sought after. The law school, therefore, "L'Ecole de Droit," is verily the magnetic pole towards which the ambition of most young French civilians is attracted while still on the benches of some Alma Mater of the capital or the provinces. To be a law student! To live in Paris on an allowance of 1500f. a year! To occupy a small chamber in the *Latium*, or Latin locality of the Faubourg St. Germain, at some 15f. or 20f. a-month! To dine at some fourth or fifth-rate *restaurant* for 16 or 18 sous! To strut about in the Luxumbourg-gardens; dance away with the *grisettes* at the Chaumière, Mabille, Salle Montesquieu, Jardin d'Hiver, or elsewhere; breakfast at a *café* for the modest sum of 10 sous, where he can read the political and literary journals of the day; and finally, "run the rig" of all the theatres when new pieces are brought out! Such is the dream by night and the waking thought by day of many a French collegian. Happy time of youth, when nought alarms, intimidates, or deters, but when everything around smiles, cheers and encourages. Disappointment has not, as yet, assailed them, nor cankering care seared their young hearts; and in the ignorance of pain they seem to think that should misfortune perchance overtake them in life, it will soon blow over like a spring storm, purifying the air and brightening up the sky.

Legal education in France is not of very ancient date, as we find that the Gauls only possessed ecclesiastical law, and that it was not till between the years 1563 and 1568 that the Parliament took upon itself the establishing of a few professorships of civil law. But these were done away with in 1576 by Henry III., who, by an ordinance signed at Blois, forbade such education, and prohibited studying or graduating in civil law at the University of Paris. An edict of Louis XIV. re-established, in 1679, the civil law professorships; but that interval of a century had been filled up by the sole study of the Roman law, amplified, commented upon, and considerably obscured by a host of pedantic and ambitious scholiasts. Another century rolled away, the study of the law being confined all the while to the ecclesiastical, Roman, and civil branches or interpretations. It was only during the reign of Louis XV. that the Law School was transferred from the Rue

Saint Jean de Beauvais to Sainte Geneviève, where it now stands, and was inaugurated on the 24th of November, 1783, with great pomp and solemnity. This epoch may, therefore, be considered as the only really legal one of the French bar. The staff at that time consisted of six professors of Roman or canon law, one professor of French law, and twelve "agrégés," or assistant professors. Yet, with all those changes and modifications, the school was far from giving general satisfaction; the examinations were merely formal, while bribery and corruption in obtaining degrees and diplomas were carried to a most shameful extent. This is so true, that we find the following censure in the *Secret Memoirs* of the time: — "The law schools are a most deplorable abuse, and a ridiculous farce at the same time." "Les écoles de droit sont à la fois l'abus le plus déplorable et la farce la plus ridicule." But such a severe reproach cannot, fortunately, be raised against the present system, which is yearly increasing in difficulty as to admission, and severity as to discipline *intra*, and morality *extra muros*.

When the first revolution broke out in France and stalked o'er the land, legal education was suspended for a time, and there then arose two special schools, one called the "University of Jurisprudence," in the Rue de la Harpe, and the other called the "Academy of Legislation," in the Rue Vendome, both in the Faubourg St. Germain; and it is a remarkable fact that the great stars of the French bar during the first half of the present century, such as Dupin *ainé*, Mauguin, Parquin, Hennequin and Berryer, received their legal education at the latter nonuniversity institution. When, therefore, the *Napoleon Codes* were first promulgated, the Ecole de Droit was re-opened on a new basis, by a decree dated March the 14th, 1804. This decree, which sprang from the Civil Code, finally settled the legal education to be imparted for the future; the *minimum* time to be spent in acquiring it; the number of examinations to be undergone quarterly, half-yearly, or yearly — in short, everything connected with the interior discipline of the school, the students being all *externes* and none *internes*.

There are at present in France nine law schools, one in each of the following cities or chief towns, and I borrow the subjoined abstract from the last "University Statistics:" — Aix, 833 students; Caen, 707; Dijon, 681; Grenoble, 810; Paris, 13,096; Poitiers, 868; Rennes, 910; Strasbourg, 436; Toulouse, 2557; making in all, 20,898,

of whom one-half never go beyond the bachelor's degree, one-fourth sit down satisfied with the licentiate's degree; and the one-fifth persevere and obtain the highest degree, which is the "doctorat," or LL.D., in no wise an honorary or complimentary one, but which, on the contrary, must be toiled hard for. The course of studies requires two years for the "baccalauréat," or bachelorship, three years for the "licence," or licentiate's degree, and four years for the "doctorat." But the mere bachelors never practise: they become *avoués*, *notaires*, *huissiers*, or enter upon some branch of the civil service, where some legal knowledge is required, and many of them settle down into provincial *juges de paix*, something equivalent to our County Court Judges and petty debt commissioners (on a minor scale), upon salaries varying from 1000f. to 2000f. a-year. Of course, all such law bachelors have more or less private fortunes of their own. The first year's labor comprises the study of the "Institutes," the two first books of the Civil Code, and the general introduction to the expounding of the law. The second year comprises the sequel to the Civil Code, the Pandects, Criminal Legislation, Criminal Law and Penal Legislation, compared together. The third year comprises the sequel still to the Civil Code, the Commercial Code, and Administrative Law; and the fourth year completes the hard labor of the aspiring doctor of laws by the study of the Rights of Nations, Constitutional French Law, and the History of the French and Roman Law. Such is a synoptical view of the course of studies, and of their *minimum* duration in the law schools of France. But it is very common to meet with, and chiefly in Paris, students of five, nay, of ten years' standing — young men of fortune, and votaries of pleasure, who consider the business of life, for the time being, to be the enjoyment of the present, catching at folly as she flies and leads them on from vortex to vortex of dissipation by the flutter of her bespangled wings, till, at last, worn out by surfeited indulgence, they settle down between thirty and forty, into some subprefecture, or some other provincial administrative social position, when they marry and live a reformed life after having sown their wild oats.

During the first fortnight of every quarter of each scholastic year the students are bound by ministerial regulations, in order to justify their attendance at lectures, to present themselves at the office of the secretary of the faculty, and inscribe there their names and surnames, their age, birth-

place and residence, in a special register *ad hoc*. Twelve of such inscriptions are required for the licentiate, and sixteen for the doctor's degree; but, as we have already said, the generality of students content themselves with the former. Nor is the cost of each inscription beyond the means of the poorest *étudiant*, it being but 15 francs. However, the taking up of the inscription is by far the easiest part of the task; the great difficulty, the great struggle, lying in the examinations and the thesis. Four examinations must be undergone during the first three years' study, and then follows that *écueil* or shoal, the thesis. The examining jury is composed either of three or five of the senior professors, and the result of the examination entirely depends upon the color of the balls obtained throughout by the candidate. Those balls are three in number — one black, which rejects the would-be recipient; one white, which admits him; and one red, which is equivalent to what is termed "a success of esteem," admitting the candidate at the wind-up of the white ball list; but the student who has been fortunate enough to carry off the white ball at every examination receives back from the secretary the full amount he has paid for his inscriptions and thesis duties, *droits*. However, such persevering *étudiants* are "raræ aves," few and far between, who have burnt the midnight oil, heedless of the pleasures of the capital. Another sort of emulation there is, which consists in the annual distribution of prizes obtained at the "concours," or competition examinations in each separate branch of legal studies. Once the first examination over, the fortunate candidate takes the title of bachelor of law; after the second, the grade of "capax" is conferred upon him; and the two last examinations, followed up by the *thèse*, crown him with the licentiate's degree. The examining jury for this last grand trial is composed of one professor, with the title of "Président de Thèse," and of four assessors, chosen from among the faculty. The candidate selects his own president, and then draws lots for the two questions in French and Roman law which he will have to expound. This ceremony gone through he shuts himself up in "brown study" for five or six weeks over his labored arguing, which he dedicates, according to old established custom, to his parents or nearest relatives, and forthwith publishes. On the day appointed he appears before the jury, and develops his *thèse*, as ably as his legal reading and acquirements admit of. The five members of

the jury have each the right of questioning him, not only upon the subjects which he has expounded before them, but also upon all the judicial matter he has been studying while attending the law school lectures. But they very seldom show over severity at this solemn trial, and consider that four examinations previously gone through are a sufficient guarantee for the information hoarded up by the candidate, who, if he be not admitted with the white ball, is generally so, unless he breaks down completely during the *modus operandi*, with the red one, which is the emblem neither of triumph nor defeat. A square piece of parchment, similar to that given to our English lawyers, stamped with the large seal of the Grand Master of the University, is then delivered to him, and in the phraseology of the law reporters, "Happy France numbers one advocate more at her bar." But although admitted to the bar, he is not yet a fee'd barrister, and he has still his stage or course of gratuitous pleading to go through for a couple of years at some provincial tribunal, his title being "avocat stagiaire." This course being completed, he becomes, at his own option, either an "avocat consultant," chamber counsel, or an "avocat plaidant," a pleader on the look out for paid briefs and sharp practice. Thus, at the least, six years theory and practice are necessary before the French law student can aspire to a 25f. brief. But if he have "connection" or "patronage," and a taste for the "magistrature," he may pop into the berth of Substitute Imperial Procureur to some provincial tribunal, a high-sounding position, at the *minimum* yearly stipend of 1200f. He will then move on by slow, very slow degrees, unless he distinguishes himself extraordinarily, and become Procureur Impérial, Juge Président de Tribunal, Conseiller de Cour Impériale, Conseiller de Cour de Cassation, Avocat Général Impérial, and last of all, perchance Ministre de la Justice, with a salary, *appointements*, of 100,000f. a-year, and a princely residence, which constitutes the French barrister's *bâton de Maréchal.*

PROMISSORY NOTE, WHEN PAYMENT IN MASSACHUSETTS.

OPINION OF HON. P. SPRAGUE ON THE EFFECT OF TAKING A NOTE ON ACCOUNT OF MATERIALS FURNISHED A VESSEL.

WILLIAM PAGE ET AL. *v.* CHARLES T. HUBBARD ET AL, ASSIGNEES OF DONALD MCKAY, AN INSOLVENT DEBTOR.

A maritime lien for materials furnished a vessel built in Massachusetts, is not lost by the creditors taking the debtor's negotiable promissory note, which is produced at the hearing and offered to be cancelled.

CERTAIN questions in this case were, by agreement of parties and the sanction of the Court of Insolvency, submitted to the arbitration of Judge Sprague of the U. S. District Court, who gave an opinion substantially as follows. The facts are sufficiently stated in the opinion.

HON. P. SPRAGUE, sitting as referee. — By agreement with the builder, who was also the owner of the ship Baltic, materials were furnished for and went into the construction of that vessel, and were charged in account against the builder. This created a lien upon that ship for the price, by virtue of the Massachusetts Statute of 1855, chapter 231. By that statute it is enacted, whenever by virtue of any contract with the owners of any ship money shall be due to any person for materials used in the construction of any ship, such person shall have a lien upon such ship to secure the payment of such debt, which lien shall continue until the debt is satisfied. Subsequently the builder gave his two negotiable promissory notes to the creditor, to the amount of thirty-five hundred dollars, which are now produced to abide the decision of this case. The creditor gave a receipt for each note, stating that it was received on account. The question is, was the lien lost or displaced to the amount of those notes? The statute says that the "lien shall continue until the debt is satisfied."

Has this debt been satisfied within the meaning of the statute? The creditor has received nothing except another promise of the debtor to pay it. This second promise is indeed in writing and negotiable; but it is a promise to pay the same debt. It acknowledges value received, but the only value received was the materials which went into the ship; the debt, therefore, cannot properly be said to be satisfied, merely because there had been two promises by the debtor to pay it, the one by parole, and the other in

writing, negotiable. But it is insisted that by the law of Massachusetts, the taking of a negotiable note of the debtor is a payment of the account, and that the original debt is therefore satisfied, within the meaning of the statute. By the common law, as administered in England, and as it is believed in all the States except Massachusetts and Maine, the taking of a negotiable note for a pre-existing debt, is not presumed to be payment, but only another promise, held as collateral to the first.

The Massachusetts doctrine is different, and this difference has been created, not by any act of the legislature, but by decisions of the courts. It is very desirable that the law of contracts, so far at least as it affects the substantial rights of parties, should be uniform throughout the commercial world, and especially between the States of our Union, so that a creditor shall not lose his debt in a neighboring State by an act, which, if done in his own, would impair no right.

The Massachusetts decisions, therefore, should be looked at with a disposition to reconcile them with the general commercial doctrine, and so as to create as little difference as a fair construction will admit. Looking at them with this view, I think that the difference may be found to affect the form of the remedy only, and not the substantial rights of the parties. In examining the Massachusetts decisions, we must not regard them as laying down any positive or arbitrary rule, but look carefully at the reasons assigned, and presume that the court did not intend that the doctrine should go farther than the reasons upon which it rests. The earliest reported decisions were pronounced by Chief Justice Parsons, in *Thacher* v. *Dinsmore*, 5 Mass. 299, and *Maneely* v. *M'Gee*, 6 Ibid. 143, where he says that this had been the course of decisions for many years. And the reason he assigns is this: that if an action be maintainable on the original account, the debtor may subsequently be sued by an indorsee of the note which had been given therefor, and thus the debtor be compelled to pay the debt twice; and therefore the creditor should sue only on the note; that is, that he should have his remedy for the debt only on the second promise. The case and the reason contemplates the mere substitution of the second promise for the first; and that the remedy would be as effectual upon the latter as upon the former.

The court do not contemplate that the creditor is to lose

any right or security; but only that he shall not place his debtor in a situation in which he may be subjected to pay twice. The Courts in England and in other States secure this object by requiring the production of the note to be cancelled when the judgment is rendered on the original promise. Thus the same object is attained by both, though by different modes. But suppose the creditor holds collateral security for the original debt, and afterwards takes a negotiable note; it is clear that by the jurisprudence of England and the other States, the creditor will not thereby lose the benefit of his collateral security, unless such was the intention of the parties; and such intention would not be presumed from the mere fact of taking the negotiable note of the debtor. Is the Massachusetts doctrine different in this respect? I apprehend that it is not, but that the decisions may be fairly reconciled with it. Her Courts say that a negotiable note, given for a pre-existing simple contract debt, is presumed to be payment; but this being only a presumption of fact, may be repelled. They have further decided that it may be overcome merely by circumstances; that is, by any circumstances that repel the presumption that the parties *intended* the second promise to be a payment of the first. The Courts of Massachusetts adhere as firmly as those of any other State to the doctrine that the intention of the parties is to govern. Now, in determining whether the creditor intended that the original contract should be annulled, the fact that he held collateral security for its performance, is very material, and has so been considered by the Courts of Massachusetts. And I believe they have nowhere said that it is not sufficient, of itself, to rebut the presumption that the creditor intended the negotiable note to be a substitute for the original promise, so as to deprive him of his collateral security.

I have met with three cases in which security was held by the creditor. In *Fowler* v. *Bush*, (21 Pick. 230,) a note payable by instalments being secured by mortgage, the negotiable note of the debtor was taken for the first instalment, and payment thereof indorsed on the original note, and the note and mortgage then sold to a third person. Here, if the first instalment had not been paid, the debtor would have been subject to a penalty, as the creditor might at once enter to foreclose. This and the entry of payment on the note, and the sale thereof then contemplated, were sufficient to show that the parties intended the new note should be payment. So in *Huse* v. *Alexander*, (2 Met. 157,) where a third person had given his own note as col-

lateral security, and subsequently the creditor gave time to the debtor, and took his note with new security, the collateral promissor, who was but a surety, was held to be discharged. But in the case of *Butts* v. *Dean*, (2 Met. 76,) a debt was due on account; the creditor took security by the bond of a third person, conditioned, if the debt was paid within eighteen months, the bond should be void; afterwards the debtor gave to the creditor his own negotiable note for the amount of the account, bearing the same date with the bond, and the creditor gave him a receipt. It was held that it was not to be presumed that the creditor intended to relinquish his security; and therefore the note was not to be deemed payment of the original debt. The remarks of Shaw, C. J., in delivering the opinion of the Court in the case of *Melledge* v. *The Boston Iron Company*, (5 Cush. 169, 170,) are, so far as they go, in accordance with the views I have here taken.

It is true that in the case of the *Barque Chusan*, (2 Story, 467,) Judge Story, treating of a case of Admiralty lien, speaks of the Massachusetts doctrine as differing from that of New York, in a manner which would indicate that he supposed the lien would be lost by taking a note in Massachusetts, when it would not be lost by the same act in New York. But the contract there was made in New York, and he had no occasion to examine the jurisprudence of Massachusetts. I think the Massachusetts doctrine does not go further than to consider the taking of a negotiable note a substitute for the pre-existing debt, where that would not impair any security or other right of the creditor. And to this extent it is unobjectionable, as it causes no inconvenience to the creditor, and may better protect the debtor. If it materially changed the right of the creditor, I think it would be an unfortunate departure from the general rule of law. I am of opinion that the lien in this case was not displaced or impaired by the taking of the notes, and that if the conditions of the statute were complied with, it could, after the expiration of the term of credit, be enforced in the Admiralty by process *in rem*.

J. A. Andrew, for the plaintiff.

P. W. Chandler, for the defendant.

Note. — In the earliest case decided before the Revolution, and referred to by C. J. Parsons, in 5 Massachusetts, the notes were not produced. In 6 Mass. 146, Parsons, C. J , speaking of the Massachusetts doctrine, says, "there is no inconvenience to the creditor." It does not extend to cases in which the notes taken are not negotiable. 6 Mass. 358.

Supreme Judicial Court of Massachusetts. Suffolk, ss. *December*, 1856.

COMMONWEALTH *v.* WINSLOW EDDY.

If the witnesses in a criminal case are to be excluded from the room, the rule must be applied to all the witnesses on both sides, except the medical witnesses.

It is not competent to ask a government witness, not an expert, on cross-examination, whether he has not said that the prisoner was crazy.

On the trial of a husband for the murder of his wife, the defence may show, as bearing upon the question of insanity, strange conduct on the part of the prisoner, occurring at times when bad conduct on the part of the deceased had been brought to his knowledge.

If evidence is introduced for the defence to show that the prisoner was insane, the government may, in reply, after the prisoner's evidence is put in, call medical experts to this point.

The burden of proof is upon the government throughout in a capital case; but upon the question of sanity or insanity, this burden is met and sustained by the legal presumption of sanity; and if evidence is introduced on this point, the government is not bound to satisfy the jury beyond a reasonable doubt, of the prisoner's sanity, but the jury must decide this question by the preponderance of evidence on the whole case.

Chitty's medical jurisprudence cannot be read to the jury by counsel as part of the argument.

THE defendant was indicted for the murder of his wife, Sarah Jane Eddy, on the 21st of June 1856. Trial before Justices METCALF, BIGELOW, and MERRICK, on the 29th of December, 1856.

John H. Clifford, Attorney General, and *A. O. Brewster*, Assistant Attorney for Suffolk, for the Commonwealth.

George S. Hale, and *Thornton K. Lothrop*, for the prisoner.

When the witnesses for the prosecution were called, *Lothrop* moved to exclude from the room those who were to testify in regard to the killing, until they should be respectively called to the stand. The Attorney General assented to the motion, and suggested the practice to be to impound all the witnesses, except the medical ones, on both sides. *Per Curiam.* All the witnesses on both sides, except the medical witnesses, must be excluded.

One of the grounds of the defence was, that at the time of committing the act the prisoner was insane. On the cross-examination of James Feely, a witness for the government, *Hale* proposed to ask him if he had not said the defendant was "a raving maniac, and as crazy as a bear." *Per Curiam.* The question cannot be put.

Hale offered to show strange conduct of the prisoner occurring at times when the deceased conducted improperly, and the prisoner knew it, and claimed the right to introduce evidence of bad conduct on her part and strangeness on his, occurring together, as tending to show that the act was committed by him in a fit of insanity, brought on by her misconduct, and by its coming to his knowledge.

The *Attorney General* objected.

Per Curiam. The evidence is admissible.

At the close of the defendant's evidence, the Commonwealth called Dr. Stedman, a medical witness, who had been present during the whole trial, and proposed to examine him as an expert, as to his opinion of the prisoner's sanity, founded upon the evidence in the case.

Hale objected, that as the sanity of the prisoner must be necessarily part of the *primâ facie* case of the government, evidence on this point could not be introduced by way of rebuttal after the defendant's testimony. The government might either rely upon the general presumption of sanity, or introduce evidence to prove the sanity of the prisoner. But if they chose to rely upon the presumption, they could not introduce further evidence after the prisoner's case was closed, and cited *Rex* v. *Stimpson*, 2 C. & P. 415.

Metcalf, J. — We think the testimony should be admitted; and that this is the first time at which it would be proper for the Commonwealth to offer it. There is no disposition on the part of the Court to deny the general doctrine contended for, that the burden is on the government throughout in a criminal case, to prove everything necessary to constitute the offence charged; but there is a legal presumption, which the law raises in all cases, that a person is of sane mind. That presumption is evidence of the fact, and it stands until rebutted. And when testimony is introduced to rebut it, and the presumption is rebutted and overcome, the jury, upon the whole evidence in the case, must be satisfied by a preponderance of evidence, of the prisoner's insanity.

In the closing arguments, the question of the burden of proof was discussed at considerable length. We can only present a brief and imperfect sketch of the arguments, as well as of the charge of the Court.

Hale, for the prisoner, argued upon this point as follows:

The burden of proof is on the government to show, beyond a reasonable doubt, that the prisoner was of "sound

memory and discretion" at the time of the alleged homicide. The presumption of sanity only goes to the extent of authorizing the jury to find its existence in the absence of opposing evidence, and to excuse the government from introducing any testimony upon this point as part of their *primâ facie* case.

The Commonwealth must prove the crime alleged, beyond a reasonable doubt. The crime of murder is defined to be "where a person of *sound memory and discretion*, unlawfully killeth any reasonable creature in being and under the King's peace, with malice aforethought, express or implied." 3 Inst. 47; 4 Bl. Com. 195. Murder is not proved so long as a reasonable doubt remains of the existence of any one of these elements. Conclusive presumptions should not be favored in criminal cases, for they do not aid in the discovery of the truth. Wills on Circum. Ev. 30–33; Burrill on Circum. Ev. 60. This presumption merely means that most men are sane, it is evidence or argument to be met like other evidence or argument; it does not make or change a rule of law. Take the case of an *alibi*, or where it is certain that the crime was committed by one of two persons, if there be a reasonable doubt the jury must acquit. *Campbell* v. *The People*, 16 Ill. 17.

This presumption of sanity does not hold in all cases. A person deaf and dumb from birth is presumed incapable of felony. 1 Greenl. Ev. § 366. In a criminal case, this presumption meets that of innocence, and why must the latter yield here, when in other cases it is to prevail? *Rex* v. *Twyning*, 2 B. & Ald. 385; *Greenborough* v. *Underhill*, 12 Vt. 604; 1 Greenl. Ev. § 35. What is the actual force of the presumption? In Massachusetts it is said that one person in three hundred is either insane or idiotic, but not one in five thousand, probably, commits homicide, and the proportion of murderers is still less. The chance, then, is sixteen to one that a man is insane rather than a murderer.

The rule we oppose is especially hard, for the insane are less capable of making a defence than the sane, nay, in most cases can render no assistance to prove their incapacity. Nor is it a matter peculiarly within the defendant's knowledge, a circumstance which is sometimes made a ground for throwing the burden on him. We contend that the essence of the indictment, and of the issue, and for which the government are allowed to open and close the case, includes the capacity of the prisoner to commit the crime charged against him. See *Crowninshield* v. *Crown-*

inshield, 2 Gray, 524, where Thomas, J., in a very able opinion, shows that the burden of proof is in a party, offering a will for probate, to prove the sanity of the testator. It may be said that the party holding the affirmative claims against the legal right of the heir. But so here, the government allege the existence of guilt against the legal presumption, more sacred and valuable than that of the heir, of the defendant's innocence. So in *Commonwealth* v. *Bradford*, 9 Met. 268, the defendant was indicted for illegal voting in Boston, and it was proved that up to about seven months before the election he had his domicil out of Boston, the ruling below was that the defendant must prove that he had changed his domicil six months before the election, (the law requiring six months residence,) doubtless on the ground of the presumption that a man retains a domicil once acquired. But the Supreme Court decided that the burden was on the government to show that the defendant had not resided in Boston for six months before the election. See also *Stebbins* v. *Leowolf*, 3 Cush. 137; *Regina* v. *Kirkham*, 8 C. & P. 117; *The People* v. *Tripler*, 1 Wheeler, C. C. 48. And especially Bennett & Heard's Lead. Crim. Cases, p. 87, note to *Com'th.* v. *Rogers*, and p. 347, note to *Com'th.* v. *McKie*, in which this subject is treated with great ability and learning.

The Attorney General (for the government).—The general rule of law is, that the burden of proof never shifts. But there is a legal presumption that all men are sane. This presumption lies at the very foundation of all social organization and all government. It underlies all the contracts of men, all business and traffic, all the daily intercourse and arrangements of human life. It is the strongest presumption we have. That all men are sane, know what they are doing, and intend the consequences of their acts. And this presumption, so powerful and all pervading, meets and sustains the burden of proof, and stands until it is rebutted and overthrown.

It is essential to the safety and maintenance of the government that this should be so; society could not exist for a day, and government would come to an end, were it otherwise; and therefore so strong is the presumption, so essential to the safety and well-being of the community is it, that it should be considered sufficient evidence of sanity until rebutted by stronger evidence; that the law will hold is sufficient, even though it be an exception to the ordinary

rules of evidence and of the burden of proof. Reasons of public policy and the public safety make this a necessary rule in the administration of the criminal law. And this is the established doctrine in this Commonwealth. *Rogers' case*, 7 Met. 500; *Com'th.* v. *McKie*, 1 Gray, 61.

A further argument may be drawn from the fact that it is not every kind or degree of insanity that excuses a man from responsibility. A man may be partially insane, and yet be responsible for the acts with which he is charged as a criminal. It is the nature and degree of his insanity with reference to that particular act, and not the general state of his mind, that determines his responsibility. [Upon this point and upon the various tests of insanity, the Attorney General proposed to read from Chitty's Medical Jurisprudence. *Lothrop* objected. *Per Curiam.* — It cannot be read. The reason is, that all evidence must be under oath.]

The very form of the verdict required by our statutes, (Rev. St. ch. 137, § 12,) where there is an acquittal on the ground of insanity, shows this to be the rule of law in this Commonwealth. In such cases the jury are required to find as an affirmative proposition that the prisoner was insane, and therefore not guilty. It is not sufficient where this defence is sustained to bring in a general verdict of not guilty, but there must be a special verdict, establishing affirmatively the prisoner's insanity.

Upon these grounds, the general and universal presumption of sanity, the fact that mere proof of partial insanity furnishes no sufficient defence, but that insanity must be shown with reference to the particular act in question; the well settled rule of law on this point in this Commonwealth, as laid down in the cases cited, and the particular verdict required by the statute where the verdict rests upon the prisoner's insanity, it is clear that there is no such burden upon the government as is contended for by the defence; but that the insanity and consequent irresponsibility of the prisoner must be established to the satisfaction of the jury by the preponderance of the whole evidence in the case.

Metcalf, J. — The burden of proof is on the government throughout to prove every essential ingredient of the crime. They must, therefore, prove that the offence has been committed by a reasonable creature. But there is a legal presumption that all men are sane; and when the fact that the act was committed is proved, the burden is sustained by the legal presumption, which stands till re-

butted by proof of the contrary, satisfactory to the jury. It is not to say that the burden of proof changes. But it is sustained by the legal presumption, until this presumption is rebutted. In order to overcome this presumption, and to shield the prisoner from responsibility, it must be proved to the satisfaction of the jury, by a preponderance of the whole evidence in the case, that, at the time of the commission of the act, the mind of the accused was diseased and unsound, and that the disease existed to so high a degree that, for the time being, it overwhelmed the reason, conscience and judgment, that the prisoner in committing the homicide acted from an irresistible and uncontrollable impulse.

And this is not only required by the general rule of law, but is distinctly implied in the provision of the Rev. Sts. c. 137, § 12, that "when any person indicted for an offence, shall, on trial, be acquitted by the jury, by reason of insanity, the jury in giving their verdict of not guilty, shall state that it was given for such cause. *Verdict, guilty.*

Supreme Judicial Court of Massachusetts, Norfolk County. February Term, 1857.

WILLIAM H. ELA *v.* J. V. C. SMITH ET AL.

The power vested in the mayor of a city by St. 1840, c. 92, §§ 27, 29, to call out the militia in case of a threatened tumult, riot, or mob is *quasi* judicial in its nature, and his decision that such an emergency has arisen is conclusive.

When the militia have been called out on such an occasion, the mayor may, before any tumult or riot has actually broken out, or mob gathered, order the troops to repair to certain places, under their proper officers, to aid the civil power in preventing or repressing the anticipated disturbance. But he cannot clothe them with a discretionary power "to sustain the law of the land," or to do anything but carry out his own specific order, verbal or written.

If the commanding officer of the militia, by virtue of such discretionary power attempted to be conferred on him, give an order to clear and guard the streets, and this order is carried out by a certain company, the mayor, the captain of that company, and the commanding officer of the militia, are responsible to any person who shall be injured by the soldiers in executing this order, if the soldiers used no more violence than was necessary in fulfilling their instructions.

THIS was an action of tort brought in 1854, against the mayor of Boston of that year, the major-general in command of the militia, called out by the mayor on the day of

the rendition of a fugitive slave, a captain of one of the companies of militia, and the United States Marshal. The plaintiff alleged that he had been beaten and wounded by some of the soldiers against law, while quietly endeavoring to reach his place of business. Upon the trial, the rulings were so made as to take the case from the jury, and the points of law were argued, before the full bench, about a year since. At the opening of the court this term, the decision not having been written out, a brief statement of it was made by BIGELOW, J., substantially as follows: —

By St. 1840, ch. 92, §§ 27, 29, the mayor of any city is authorized, in case "a tumult, riot, or mob shall be threatened, and the fact be made to appear to him," to issue a precept, the form of which is prescribed by § 27, to call out a division or any smaller number of the volunteer militia, "to aid the civil authority in suppressing such violence and supporting the laws." The authority thus given, of determining the question of fact, whether, in a particular case, a riot, tumult or mob is threatened, is in its nature a *quasi* judicial power; and the jurisdiction to decide it is conferred upon the mayor of a city, as well as upon the commander-in-chief and the other officers designated in the statute; in this, as in all other cases, where a special and limited jurisdiction is given by law to a magistrate or other civil officer, he cannot be held responsible in a civil action for his judgments, and acts done in pursuance of them, so long as he acts within the scope of his jurisdiction, however false and erroneous may be the conclusions to which he arrives; and the same protection is extended to those who are legally called upon to act under and in pursuance of the authority conferred upon him by law. In this case, therefore the question, whether there was a riot or mob threatened, so as to justify the mayor in issuing his precept for the assembling of the first division of the volunteer militia on the second day of June, 1854, cannot be inquired into. The judgment of the mayor upon this question is conclusive.

The precept issued by the mayor, dated May 31, 1854, by which the said division was assembled on said second day of June, is in exact conformity to the provisions of the statute, and the officers and men were legally called out in pursuance of said precept.

They being thus legally called out and assembled at the place designated in the precept of the mayor, for the

reason that "a tumult, riot or mob was threatened," it was competent for the mayor of the city, before any mob had actually assembled, or any tumult or riot had broken out, to order the troops to repair to certain designated places, under the command of their proper officers, for the purpose of aiding the civil authority in repressing and preventing such apprehended tumult, riot, or mob. This results from the express language of the statute, as well as from necessary implication; it being provided, not only that the civil authority may call out a military force, when "a tumult, riot, or mob is threatened," but also, that when so called out, it may be used "to suppress *such* violence," which clearly includes violence "threatened," as well as that actually existing. It follows that any order, given by the mayor on said second day of June to the division assembled on Boston Common in pursuance of his precept, by which they were directed to repair thence to a designated portion of the city, there to perform a specific duty or service, by him directed, for the purpose of preventing the assembly of a mob or the breaking out of a riot, would be, in the language of the statute, such an order as they might well receive and obey according to law. St. 1840, c. 92, §§ 27, 29.

It is not competent for the mayor of a city or other civil officer, under the powers conferred on him by statute, in cases of riot or mob, either threatened or actually existing, to vest in the officers or men called out by virtue of his precept any discretionary power or authority to take any steps or do any act to prevent or suppress such riot or mob. The manifest intent and purpose of the statute are that the volunteer militia shall, when thus called out, act as an armed police, subject solely and entirely to the absolute and exclusive control and direction of the civil authority, as to the specific duty or service which they are to perform. By no other means can "the military be kept in exact subordination to the civil authority and be governed thereby," according to the express provision of the Constitution. Of course, the details in which a specific service is to be performed must necessarily be left to the officers who are in command of the military force. But the service or duty must be directed and designated by the civil authority. In the present case, therefore, if the division, in marching from the Common, where they were assembled in pursuance of the precept of the mayor, or in clearing the streets or guarding them from all ingress, acted under the proclamation of the mayor, bearing date June 2,

1854, addressed to the citizens of Boston, a copy of which was sent to the major-general, in which it is stated that the military force are "clothed with full discretionary powers to sustain the laws of the land," and, by virtue of the discretion thus given, proceeded to clear and guard the streets, they acted without any lawful authority, and the defendants, Smith, Edmands and Evans, are legally responsible to the plaintiff for any act of force or violence committed upon him, in pursuance of their orders, or in which they or either of them participated. If, however, it shall be made to appear that the act of clearing and guarding the streets was done in pursuance of a specific order from the mayor, either verbal or written, to effect that purpose, it would be a sufficient justification for all the acts of the defendants, which were reasonable and necessary for the performance of this specific duty, and the plaintiff cannot recover, unless he can show that the force used towards him was excessive and unreasonable. Such specific order may be shown by proof, that it was arranged between the mayor and the major-general, that the service of clearing and guarding the streets was to be performed by the military force on the happening of a certain specified contingency or event, and that intelligence of the occurrence of such contingency or event was communicated to the major-general by the mayor, with an order to carry out and perform the specified duty previously designated and prescribed by him.

No question as to the constitutionality of the act of Congress, for the surrender of fugitives from labor, or the legality of the acts of the United States Commissioner, in issuing a certificate under said act, can be raised in this case. The defendants, Smith, Edmands and Evans, do not justify their acts, under the proceedings of the United States Commissioner, but solely under the provisions of law authorizing a military force to be called out for the prevention of a threatened riot, of which the removal of a fugitive slave was anticipated as the occasion. The only question, therefore, as to them, is, whether they were legally called out and acted under orders lawfully given by the civil authority. The right and duty of calling out a military force to repress and prevent an anticipated riot, cannot be made to depend, in any degree, upon the cause of such threatened disturbance of the peace. It is equally the duty of the civil officers to take all proper steps to prevent a threatened riot or mob, whether it was likely to arise from the enforcement of a constitutional or unconstitutional law.

Upon the evidence offered by the plaintiff at the former

trial, there is no sufficient evidence upon which a jury would be authorized to find a verdict against Freeman, the other defendant. The acts done by him had no other connection with those of the other defendants, by which the plaintiff alleges he was injured, than necessarily arose from the fact that the performance of his official act as Marshal of the United States was the cause or occasion which rendered it necessary, in the judgment of the mayor, to call out the military force to prevent a threatened disturbance of the peace. But Freeman cannot, on this ground, be held answerable for the orders and acts of the mayor and the military force in preserving the peace of the city.

It follows, that the question whether the military force were legally and properly called out cannot be drawn into controversy in this case. That was conclusively settled by the action of the mayor in issuing his precept according to the provisions of the statute, and thus the only questions as to the remaining defendants, Smith, Edmands, and Evans, are, whether specific orders were given by the mayor for the clearing and guarding the streets on the second day of June, 1854, and if so, whether any of the defendants acted unreasonably, or exceeded the just limits of the authority vested in them by law.

Of course, the question whether the acts charged in the declaration were the result of the orders given for the suppression of a riot, or were the result of a sudden outbreak, in which any of the defendants acted upon his own responsibility, will be open, to be determined upon the familiar principles applicable to actions of trespass upon the person. The defendants cannot be held for the unauthorized acts of others, done without their authority, and not coming within the fair scope of the orders given by them. The defendants Smith and Edmands will not be liable to the plaintiff for any force and violence used upon him, beyond that which was necessary to carry into effect the order for clearing and guarding the streets, even if such order was not legally given, according to the rules and principles above stated. Not having been present at the alleged assault, they cannot be held liable for any unauthorized violence of their soldiers. The same rule would apply to Evans, if he did not authorize or participate in the alleged violence offered to the plaintiff.

Accordingly, the court ordered the case to stand for trial.

J. P. Hale and *C. M. Ellis*, for plaintiff.

R. Choate, *B. F. Hallett*, and *G. S. Hillard*, for defendants.

Notes of Cases in United States Court of Claims.

WARD *v.* THE UNITED STATES.

Presumption of the due appointment of a public officer.

The Continental Congress, in 1776 and 1777, passed resolves to borrow money on loan office certificates of the United States, and that a loan office be established, for that purpose, in each of the States, and a commissioner to superintend such office be appointed by the States respectively, and that the commissioner of one of the loan offices should countersign the certificates. The petitioner alleged himself the legal holder of forty-three such certificates, dated December 23, 1777, payable December 1, 1781, with interest annually at six per cent. At the bottom of each was, "Countersigned by order of J. A. Trenslen, Governor of Georgia. E. Davis, Jr." Endorsed was the payment of four years interest to December 23, 1781, by the continental treasurer.

It was shown that the treasurer of the United States was duly authorized, while the State of Georgia was in the hands of the enemy, to pay interest on the certificates issued from the office in that State; that in 1792 the secretary of the treasury reported to Congress that no evidence had been obtained of the appointment of E. Davis to the office of commissioner of loans for Georgia, and that the department, apparently for this reason, had, since 1792, refused to pay certificates like these in question. It appeared, however, that such certificates had, at some time, probably before 1792, been taken up and cancelled at the treasury.

Held, that as Davis appeared to have come into possession of these certificates from the governor of the State, and to have issued them for value, and as the interest on these certificates, and both interest and principal of others similar, had been paid by the treasurer of the United States while the transactions were recent, without objection, it was to be presumed that the issue was regular, and that Davis was the loan commissioner, although not so described; and that these certificates must be presumed a just debt against the United States.

FERGUSON, ADM'R. *v.* THE UNITED STATES.

"Value" of goods appraised after seizure.

The act of Congress entitled "An act to regulate the collection of duties on imports and tonnage," approved March 2, 1799, provides that if any goods which shall have been entered, shall be wrongly invoiced, with design to evade the duties, they shall be forfeited; and that of the goods, or their value, so forfeited, one moiety shall be for the use of the United States, and the other shall be divided between the collector, the naval officer, and the surveyor. Any claimant of goods seized may, by applying to the court, have

the goods appraised, and give bonds to the United States for their value, to be forfeited in case judgment goes against him, and thereupon and after producing a certificate that the duties have been paid, may take the goods. Certain wool imported into New York in 1851, was seized, and delivered to the importers on a bond as above provided. The importers also paid the duties, and then abandoned the suit, and paid the appraised value of the goods. The petitioner's intestate was one of the officers entitled to share in the forfeiture, and was paid his proportion of the appraised value of the goods. The petitioner claimed in this action a similar share of the duties paid to the United States.

Held, that the value of the goods was to be ascertained at the place of importation, and that the appraisers would be presumed to have considered the increase in value which the payment of duties would occasion; it appearing also, in fact, by computation, that the appraisers in this case must have considered such increase. And that neither as duties, nor as forming part of the value of the goods, could the petitioner recover from the United States any part of the duties.

Boyle, Adm'r. *v.* The United States.

Clerk of department entitled to pay for extra services not clerical.

The petitioner's intestate was for many years chief clerk of the navy department, and regularly received his salary as such, during the whole period; he also at various times acted by appointment of the president, as secretary of the navy, *ad interim*, during the illness or absence of the secretary. The statutes authorizing the president to appoint persons to perform, temporarily, the duties of secretary of a department under such circumstances, were passed before the office of secretary of the navy was created, the department of war then having charge of that branch of the public service.

Held, that the beneficial provisions of these statutes might fairly be extended to the navy department, especially as such had been the uniform practice of the government.

The act regulating the pay of clerks in the public offices, does not prohibit a clerk from receiving compensation for services properly performed by him in another capacity, as that of secretary *ad interim*, but only for any services he may render in any way, as clerk.

The office of secretary *ad interim* is a separate office from that of secretary, the two being analogous to those of principal and deputy, and the secretary *ad interim* is an inferior officer, within the meaning of the constitution, and Congress may, therefore, without infringing the constitution, vest the appointment of such an officer in the president, without the advice and consent of the Senate.

The office is a public office, and the person filling it is entitled

to compensation; which should be at the rate of pay established for the secretary of the navy.

BERRYMAN *v.* THE UNITED STATES.

Slave trade — Distribution of proceeds of captured slaver.

By the act of May 10, 1800, vessels employed in the slave trade may be seized by any of the commissioned vessels of the United States, and proceeded against in any District Court, and condemned for the use of the officers and crew of the vessel making the capture, the proceeds to be divided in the proportion directed in the case of prize. In cases of prize, the provision is that if the captured vessel was of equal or superior force to that of the captors, the whole proceeds go to the latter, but if inferior, shall be equally divided between the United States and the captors. By the act of March 3, 1849, all prize money arising from captures made by vessels of the navy is to be paid by the marshal into the treasury of the United States, and such parts as belong to the officers and crew of the vessels of the navy shall be paid to them under the direction of the secretary of the navy.

The petitioners were the officers and crew of a public armed vessel, which captured a slaver in 1848. The captured vessel was brought into New York, and proceeded against in that district, and condemned in July, 1849, and sold. It would seem that the marshal did not pay the proceeds into the treasury. In 1851, upon the application to the District Court by the present petitioners, for a decree of distribution, the case was referred to a commissioner to report the sum remaining for distribution, the persons entitled as distributees, and the sum due to each. The commissioner reported the sum to be distributed as $20,664.69; that in his opinion the United States were entitled to one half thereof, because the vessel captured was of inferior force to that of the petitioners; that the fund must be considered as in the treasury, and would undoubtedly be paid out, by the proper authority, in accordance with the decree of distribution. The report also found the sum due to each distributee. The court confirmed the report, and ordered distribution accordingly, and the decree has never been reversed.

Held, that the decree of the District Court is final and conclusive as to all matters within the jurisdiction of that court, namely, the condemnation of the vessel; the amount of the fund; and that it was to be considered as paid into the treasury. But that the distribution among the petitioners was by the statute left with the secretary of the navy, and the decree upon that subject was not binding. A bill was reported to pay the sum of $20,664.69 out of the treasury, to be distributed among the officers and crew of the capturing vessel, in such proportions as shall be designated by the secretary of the navy.

Notes of Cases in Vermont.

Franklin County. Supreme Court. January Term, 1857.

HUNT ADMR. *v.* PAYNE.

Administrator.

The administrator *de bonis non*, may recover in debt, or *scire facias*, upon judgment, in favor of former administrator, as he may sue, as administrator, upon all contracts which, when recovered, will be assets, whether made with the intestate, or with the administrator as such.

HUNT ADMR. *v.* PAYNE.

Evidence — Condition.

This is ejectment for certain lands devised to the defendants upon condition, that they maintain and comfortably support the testator's parents during life. The plaintiff gave no evidence of the non-performance of this condition, except the former recovery of the lands in ejectment in favor of the executor. And no evidence was given of the performance of the condition.

Held, that the former recovery must be presumed to have been for non-performance of the condition in the devise, and is sufficient *primâ facie*, to entitle the administrator to recover. And that after the former recovery, the defendant's estate, at law, was gone, and they could only be restored to it, by a proceeding in equity, in the nature of a bill to redeem.

MORROW *v.* WILLARD.

Deed — Construction.

In the present case, a question was raised in regard to the division line between plaintiff's and defendant's land. Both parties derived title from the same person, who described plaintiff's land, both in the deed to him, and in the exception to the description of defendant's land.

Held, that both descriptions might be taken into consideration, in determining the division line, as part of the same transaction, although not executed at the same time, and having no other connection, except as coming from the same person, and intending to

define the same land, they formed a virtual estoppel upon the grantees, *so far as they were intended to be identical*. But if not susceptible of being made identical, then the deed of earliest date must control that of later date.

Stilphin v. Smith.

Railway company — Power to remove passengers.

Railway companies have the power to make and enforce all reasonable regulations in regard to the passengers, and to discriminate between fare paid in the cars, and at the stations, and to remove all persons from their cars, who persist in disregarding such regulations, in any reasonable manner, and proper place, although between stations.

But the place of removing such offenders from the cars, may be defined by statute, and a statutory requirement of existing railways, not to remove any one from the cars, except at a regular station, however much it may embarrass the enforcement of the police of the company, is still binding upon them. And a statute giving railways the power to remove offenders at regular stations, is a virtual prohibition from removing them at other points.

Bull v. Bliss.

Guaranty — Diligence.

The defendant being indebted to plaintiff, transferred to him the note of a third party, with the following guaranty, "I warrant this note good and collectable for two years from date." The defendant left soon after for California, and did not return for three or four years. The maker of the note continued good till near the close of the two years, when he ceased to have any property, by which payment could be enforced. No demand of payment, or notice of non-payment was made, or given to defendant for a long time after the expiration of the two years, and just before the commencement of the present suit.

Held, that the obligation of the guaranty was, that the maker of the note should remain good, and the note be collectable during the whole time of two years. That it was incumbent upon the plaintiff to take measures to enforce the collection during the two years, or show such utter insolvency, as to render all such efforts clearly of no avail.

But that notice of non-payment, or demand of payment of defendant, were only necessary before bringing suit, as a condition of the guaranty, and not as a matter of diligence.

Barton v. Burt.

Recognizance — Appeal.

This is a suit upon recognizance for an appeal, the condition of which was substantially, that the appellant should prosecute the appeal to effect, and pay all additional costs, and the accruing rents of the premises in question, until final judgment, in case of failure. Judgment was given against the appellant in the Appellate Court, and exceptions allowed, and the case transferred to the Supreme Court, and execution stayed. This judgment was affirmed in the Supreme Court. The question is whether the consor is liable for rents while the cause was pending upon exceptions in the Supreme Court.

Held, that the judgment in the Appellate Court is not to be regarded as final, so long as the appellee is not entitled to take execution.

Street & Burditt v. Hall.

Conflict of laws — Negotiable note, when payment.

This is an action for goods sold defendant for the use of one Platt, and which, as between him and the defendant, it was Platt's duty to pay for.

The plaintiffs took Platt's note for the amount of the bill payable at the bank, and gave him a receipt of payment, in such note, describing it. The plaintiffs are merchants in the City of Troy, and the note and receipt were there executed.

Held, that the effect of the receipt must be determined by the law of New York. By that law it does not amount to payment, unless the note was paid at maturity. Nor will it operate as an estoppel upon the plaintiffs, from suing the defendant, as the receipt expresses the mode of payment, and the defendant was bound to know its legal effect, and cannot therefore urge, that it was calculated to impose upon him the belief, that Platt had paid the debt, and thus induced him to relax his efforts to collect it.

Held, also, that such note not being negotiated, and remaining in the power of the party, is no objection to a recovery against defendant, even without surrendering the note.

If the note had been negotiated, it should be surrendered before the party is entitled to execution.

Brainard v. Champlain Transportation Company.

Interest, not recoverable where delay by plaintiffs.

This is an action for wood delivered the defendants, in pursuance of a contract to pay as soon as the same should be measured

and certified by defendants' measurer, which was expected to be done the winter following. The plaintiffs had all their other claims for wood delivered defendants, certified and paid at the usual time. But this claim was overlooked for some three years, and when presented, the plaintiffs claimed interest on the amount from the time when it would have been paid, if properly presented, which the defendants declined to pay, paying into court money to the amount of debt and costs. The case turned upon the question of interest.

Held, that there was no delay or default on the part of defendants, and that they could not be compelled to pay interest. The delay seems to have been wholly owing to the forgetfulness of plaintiffs.

Haynes v. Lassell.

Highway, discontinuance of.

Land owners have no such interest in the continuance of a public town highway, as will entitle them to notice and hearing before the selectmen, upon the question of discontinuing such highway. They have only the same kind of interest in the highway, which the public generally have. It may be greater in *degree*, but of the same *quality*. In the laying of a road, the land owners have a private interest, as it deprives them of the use of their land. But they have no such interest in the question of its discontinuance.

Watson v. Jacobs.

Statute of frauds — Debt of another.

This is an action by a tailor, for the price of a coat made for some third party. After the coat was made the plaintiff declined to deliver it until the defendant became responsible for the price, and upon defendant promising to pay plaintiff for the coat, the plaintiff suffered the person originally contracting, "to go out of the country with the coat, released of all liability."

Held, that this imported that the original debtor was released from his liability, and that the defendant thereby became sole debtor, and that his undertaking was not therefore within the statute of frauds.

Addison County. Supreme Court. January Term. 1857.

BOGUE *v.* BIGELOW.

Deed — Identity of name.

This is ejectment for the original right of Aaron Jordan Bogue, in the township of Kingston, now called Granville. The name as written in the enrolment of the charter, is Aaron I. Boge. There was proof in the case of the change of the orthography of the family name from Boge to Bogue. There was no other name in the charter having any analogy to the present. In the proprietor's records of an early date, soon after the grant, which was in 1781, another proprietor is allowed to pitch a lot, in the name, and for the right of Aaron Jordan Bogue.

Held, that the I and J are so nearly identical, especially in writings of the date of this charter, that the change from one to the other is scarcely sufficient to raise any doubt of identity. And that all doubt is removed in the present case, by the proprietor's records. And also, that when in tracing land titles, the names are identical, that is to be regarded as *primâ facie* evidence of the identity of persons, there being no contrary presumption to encounter it. But in criminal proceedings, the presumption of innocence is such, that where guilt depends upon record proof, some further proof of identity of persons must be given beyond mere identity of names.

HOLDEN *v.* DURANT.

Principal and agent.

Held, that when one takes the note of the principal, executed by the agent, for a matter known to the payee to be without the proper scope of the agent's authority, it will not bind the principal. But if the agent have authority to execute notes on behalf of the principal, and execute a note to one who is ignorant of any want of authority in the particular case, it will ordinarily bind the principal.

SMALL *v.* HASKINS.

Exceptions.

By the statute of Vermont, passed in 1824, causes in the County Court might pass into the Supreme Court, for revision of any questions of law raised in the trial, and placed upon the record, by allowance of any two judges of the County Court. By the Re-

vised Statutes of 1839, all such exceptions in the County Court are required to be allowed, and placed upon record in the clerk's office by the presiding judge at the trial, within thirty days after the rising of the court. The former provision is still pursued in the Revised Statutes.

Held, that the latter provision must control the mode of allowing exceptions, for the purpose of transferring cases to the Supreme Court on motion. We do not decide that two judges, being a majority of the court, although neither presided at the trial, may not enter upon the record questions of law decided at the trial, so as to form the basis of a writ of error. But the statute seems explicit, that all questions raised at the trial, and which are expected to pass to the Supreme Court for revision, on motion, must be certified by the presiding judges.

Rutland County. Supreme Court. February Term, 1857.

Rut. & Bur. Railroad Co. *v.* Admr. of William Simson.

Evidence — Husband and wife.

The statute of Vermont having removed all objections to the competency of witnesses on the ground of interest, or being parties, the wife is a competent witness in a suit where the husband was interested, but has deceased, unless the testimony is in regard to matters of confidence between herself and her husband.

Langdon *v.* Rutland.

Constable — Bond of may be waived.

The statute requiring constables to give bonds before entering upon the duties of office, does not render void their official acts before giving bonds. If the town waive the execution of a bond, either temporarily or permanently, the appointment is valid, and their acts are legal, without a compliance with the statute in this particular. And equally when the town suffer them to act in the office without giving bonds.

Jones & Dow *v.* Bradley.

Contract.

In a contract for work and labor, in building a railway, three fourths to be paid in money, and one fourth in railway stock, at par, which was in fact worth but sixty-five *per cent.*, and with the condition, that if the party undertaking the work did not carry it

forward with sufficient rapidity to meet the undertaking of the other party with the company, such other party might assume the completion of it, or any portion of it.

Held, that where the money portion of the contract was over paid, either in money, or by assuming a portion of the work, it could only be allowed to reduce the stock payment, dollar for dollar, and not according to the market price of the stock.

Huntoon *v.* Jones & Dow, and Trustee.

Partnership.

One partner, during the continuance of the partnership, may transfer the negotiable promissory notes of the firm, by indorsement to himself, and he may then indorse them to others in payment of his own private debts. This will so transfer the title to such notes, that they cannot be attached by the creditors of the firm by trustee process. If one take such notes of one of the firm, in payment of his own debts, knowing the firm to be insolvent, and having reason to suppose such transfer to be in fraud of the rights of the creditors of the firm, or other partners, he may be compelled by a proceeding in equity, doubtless, to account for the money collected upon the notes.

Hodges *v.* Rut. & Bur. R. R. Co.

Railroad company — Compensation of directors.

Railroad directors cannot recover compensation beyond the rate fixed by the general resolutions of the board. And when a director acts as a member of the executive committee of the board, or in selling the bonds of the company, his service is to be regarded as in his capacity of director, and the amount of compensation is limited to that allowed directors.

Clark *v.* School District in Pacolet.

Contract.

A school teacher, who contracts to teach for a definite term, and who leaves before the term is finished, without excuse, cannot recover anything for part performance.

Stevens *v.* Fisher.

Judgment — Absent defendant.

A judgment upon attachment of substantial property of a non-

resident debtor, without notice, is not a nullity by the laws of this State, but the defendant is entitled to make the same defence he might have done in the original action. But, query, whether a judgment recorded upon a mere nominal attachment may not, by a proper plea, be regarded as no judgment. But this cannot be so regarded on the plea of *nul tiel record*.

Walker *v.* Norton.

Statute of frauds.

Where the lessee of an academy, who was the teacher, employed one of the students to assist in getting up an exhibition, and to procure music, on a promise of payment, there being a fund raised by subscription, from which it was expected these expenses would be paid: —

Held, this promise of payment was an original, and not a collateral undertaking, there being no one else under any similar liability, and so not within the statute of frauds.

In the present case it was the expectation and understanding, at the time this student was so employed by the teacher, that he should assist as an actor in the exhibition, which he refused finally to do, it not appearing that any compensation was expected for the dramatic portion of the service, or that this formed any portion of the consideration for the teacher's undertaking; it was *held*, that the refusal to perform as an actor, was no obstacle to a recovery for the other portion of the service.

Notes of Recent Cases in New Hampshire.*

M'Queston *v.* Morgan.

Lease — Forfeiture — Demand for rent.

Where land is demised by deed for a term of years, and a rent reserved, payable quarterly, with a proviso that if any quarter's rent remain unpaid for thirty days after the day on which it falls due, the lease shall be void, and the lessor have right to enter, the lease is not forfeited though a quarter's rent remain in arrear for thirty days, unless the quarter's rent have been duly demanded.

In such case, to work a forfeiture, the rent must be demanded either on the day when it falls due, or on the last of the thirty days, and a demand on an intermediate day will not be sufficient.

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* Continued from page 577.

STATE *v.* M'GLYNN.

Indictment for breach of license law — Negative averments.

The provisions of the fourth section of the Act of 1855, for the suppression of intemperance, that the officer, complainant, &c., may be examined as witnesses on the trial of the person arrested as to any matters alleged in the complaint, were not required to render such persons competent witnesses, as they are competent upon general principles, not having any interest in the result of the proceedings. It is not, therefore, necessary as a prerequisite to the admissibility of such persons as witnesses, that it be shown that due legal proceedings have been had according to the provisions of the section.

Where the enacting clause of a statute describes an offence with certain exceptions, it is necessary to state all the circumstances that constitute the offence, and to negative the exceptions; but where there are exceptions or provisoes contained in separate clauses or provisions of the statute, they may be omitted in the indictment, and the respondent may show them in his defence.

The first section of the Act of 1855, declares that "it shall be unlawful and criminal for any person to sell or keep for sale any spirituous or intoxicating liquor, or any mixed liquor, any part of which is spirituous or intoxicating, contrary to the provisions of this act: provided, that nothing in this act contained shall be construed to prevent the sale or keeping for sale, by any person, of domestic wine or cider unmixed with spirituous liquor, except when sold to be drank on or about the premises where sold, or the sale or keeping for sale by the importer thereof, in the original casks or packages in which it was imported, of foreign spirituous or intoxicating liquor, imported under the authority of the laws of the United States." In an indictment upon this section, it was held, that it was unnecessary to aver that the keeping for sale was not of any of the kinds of liquor specified in the proviso.

Where the subject matter of a negative averment in an indictment relates to the respondent personally, or lies peculiarly within his knowledge, the averment will be taken as true, unless disproved by him. And upon an indictment for a breach of the license law of 1855, alleging affirmatively that the respondent was not an agent for the sale of liquor, the State is not bound to prove the averment.

Where an indictment was for "keeping for sale" spirituous liquors, contrary to the statute, the fact may be proved without showing "a sale or an offer or attempt to sell."

FISKE *v.* M'GREGORY.

Statute of Frauds — Sale of land at auction.

The plaintiff declared in assumpsit upon a promise by the defendant to pay to one L. K. the amount of a debt due from the

plaintiff to L. K., secured by a mortgage of the plaintiff's real estate, in consideration of a deed of release given by the plaintiff to the defendant of the estate mortgaged. It appeared in evidence that the plaintiff had an auction sale of his property, including the mortgaged estate; and when this was offered for sale, the auctioneer, after describing the property, stated the exact amount of the incumbrance, and called for bids by asking: "Who will give more," or "how much more will you give," and it was struck off to F. F. for $50. The clerk of the auctioneer, who kept the account of sales, made a memorandum in pencil upon his account of sales, but without signature, "F. F. — Right of Redemption on farm — $50." The defendant, who was present when the land was sold, afterwards agreed with F. F. to buy his bid for $25, above the amount of the bid. A quit claim deed of the land was thereupon given by the plaintiff to the defendant, with a covenant against the claims of all persons claiming, by, from, or under the grantor except the mortgage, and the defendant paid to F. F. the amount of the bid, and the $25 over.

Other parol testimony was introduced, tending to show that it was understood by the plaintiff and F. F. at the sale that the purchaser was to pay the mortgage debt.

Held, that such other testimony was admissible; that the memorandum of the auctioneer's clerk, and the deed of the plaintiff, were not such written evidence of the contract and subject-matter of the sale as to exclude parol proof, and that the whole circumstances taken together were competent to be submitted to a jury as evidence that the defendant agreed with the plaintiff, at the time of delivery of the deed, to pay the mortgage debt to L. K.

Held, *also*, that the agreement was not within either of the provisions of the statute of frauds, which requires a contract for the sale of lands, or a special promise to pay the debt of another, to be in writing.

Clough *v.* Monroe.

Officer's return — Form of action for false return — Averments — Effect of amendment of writ upon the attachment.

An officer's return upon a writ, is conclusive of the facts properly stated therein, between the parties to the suit, and all those claiming under them as privies.

Case against the sheriff is a proper remedy for an attaching creditor, who loses his attachment, by reason of the false return of the deputy of such sheriff, on the writ of another creditor of the same debtor.

Where a deputy sheriff returned that he had made an attachment of real estate, by leaving at the dwelling-house of the clerk of the city in which the land was situate, an attested copy of a writ and his return thereon, and it appeared that the copy left was

neither attested nor a true copy; — *held*, that the deputy was guilty of a false return, for which the sheriff was answerable.

It is a sufficient averment of the falsity of such return, to allege that such deputy did not leave, at the time specified, or any other time, an attested copy of such writ and his return thereon, at the dwelling-house of such clerk, and a sufficient allegation of the damage resulting therefrom, to aver that, by reason thereof, the plaintiff was prevented from levying his execution on the same land so falsely returned as attached, and lost the benefit of his attachment thereof upon his own writ, and wholly lost the benefit of his own judgment against the debtor.

The amendment of a writ, by increasing the amount of debt claimed and declared for as due, and the sum claimed in damages, with the subsequent rendition of judgment for a sum larger than could have been recovered under the original writ, dissolves and discharges the attachment made on such original writ, as against subsequent attachments of the same property, made before the rendition of such judgment.

December Term, 1856. *Rockingham.*

Abbott *v.* Town of Fremont.

Services of paupers while upon the town.

If one is on the town as a pauper, and the value of his labor performed for the town exceeds the amount expended for his relief, he cannot recover for the excess in an action against the town for work and labor.

But if overseers of the poor retain in their charge as a pauper an insane person not needing relief, for the sake of a profit to be made out of his labor, and they let out his labor for a year to a third person, who pays the town an agreed sum beyond providing for his support, such insane person may waive his remedy against the overseers for the personal injury, and recover the money of the town in *assumpsit* for money had and received.

Dexter *v.* Sullivan.

Power in executors to sell land — Entry — Trespass quare clausum.

A will, directing the executors to sell land, gives them no estate. If there is no other provision in the will the land descends to the heir, and remains his until it is sold by the executors.

If one without any antecedent authority enter on land in behalf of the owner, the entry will inure to the benefit of the owner, if he afterwards ratify it; and his bringing an action for trespasses committed on the land before the entry, is a sufficient ratification, in case an entry were necessary to maintain the action.

In New Hampshire, an heir or devisee may maintain trespass *quare clausum fregit*, without first making an actual entry into the land.

Cook *v.* Brown.

Competency of co-tenants as witnesses — Immaterial evidence — Practice in contradicting witnesses — Delivery of deeds.

A co-tenant is a competent witness for another co-tenant, in an action brought by the former to recover his share of the premises of a disseizor; he not being a party to the suit, and his interest being in the question only.

A verdict will not be set aside for the admission of immaterial evidence, unless the court can see that it must have influenced the jury in their decision.

It is not the ordinary practice in this State for the court to express opinions in regard to the weight of evidence; but it is not irregular for them to make such suggestions in relation to the facts as they may suppose will be useful to the jury, the matter being left to them for decision.

The rule in this State does not require that, before declarations of a witness can be found proved for the purpose of contradicting his testimony, the witness must himself he asked whether he made the declarations.

To make the delivery of a deed effectual, the grantor must part with all control over it.

If a deed is placed in the hands of a depositary, to be delivered to the grantee upon the death of the grantor, provided it is not previously recalled, but the grantor reserves the right and power of recall at any time, it is not a good delivery.

Clark *v.* Woods.

Deed, thirty years old — Res gestæ — Charge to jury.

A deed thirty years old is admissible in evidence without proof of its execution, if the possession has followed the deed, and there is nothing suspicious in regard to it.

Where a will is introduced in evidence, as containing an implied admission of title in a stranger, the declarations of the devisor made at the time of its execution, in relation to the same subject, are admissible as part of the *res gestæ*.

A party cannot object to the charge given to the jury because it is not entirely accurate, or not sufficiently full, or not called for by the facts, if it is sufficiently favorable to him.

Daniels *v.* Brown.

Landlord and tenant — Trespass ab initio — Damages.

Landlord and tenant are tenants in common of crops raised on shares, until a division is made. The tenant, after he has quit the possession, has a right to a reasonable ingress upon the land to

remove his goods and utensils; and trespass does not lie against him, by the landlord, though he carries away the crops, of which they are co-tenants.

The right to enter, for this purpose, is derived from a license in law, and if the right is abused, by a resort to violence to effect the object, the tenant becomes a trespasser *ab initio*, and liable to the owner, not only for the entry, but for his share of the crops taken away. But the damages for the crops must be limited to the value of the landlord's share.

JONES *v.* BROWN.

Husband and wife — Donatio causa mortis.

Where a husband has permitted his wife, without any contract, to retain the possession and control of the personal property she had before her marriage, during her life, he is nevertheless entitled to administration upon her estate, and to retain the balance upon the settlement of his account, to his own use.

A *donatio causa mortis* is of the nature of a legacy. It becomes a valid gift only upon the decease of the donor. Such donation by a married woman, of property which belonged to her before marriage, and of which she has retained possession and control by the acquiescence of her husband, will be valid, like her will, only by his assent.

PRICE *v.* DEARBORN.

Assessment of damages after default — Auditor's report — Accountable receipt.

In assessing the damages in a defaulted action, the court may appoint a master to determine the amount to be assessed; but though he be designated as "auditor," his appointment is not under the statute, which provides for the appointment of auditors to state the accounts between the parties, and consequently neither party has the right, under the provisions of § 5, chap. 187, of the Revised Statutes, to have the question of damages submitted to a jury, upon the return of his report in such cases.

If either party has the right upon the defaults being entered, to have the damages assessed by a jury, the right is waived by neglecting to submit a motion therefor until after the auditor appointed for that purpose has made his report.

It is no objection to the report of an auditor in such case, that it is made in the alternative; one of two or more sums being reported as the amount of the damages, depending upon questions of law, raised by the facts stated in the report, and submitted for the decision of the court.

A deputy sheriff having collected money upon an execution delivered to him for collection by the attorney of the creditor, for which he was in default, was at the same time indebted to the attorney personally, upon account, and upon promissory notes, and

had also an account against the attorney, but it did not appear in whose favor the balance would be upon an adjustment of their mutual claims. The deputy delivered to the attorney three promissory notes, signed by himself, payable to a third person or order, and indorsed by the payee, and took from the attorney his accountable receipt therefor, containing a promise by the attorney to procure the notes to be discounted, and to account for the proceeds thereof when paid. The notes were discounted, and the proceeds received by the attorney, and the deputy paid the notes to the holder. After suit brought by the execution creditor against the high sheriff, for the default of the deputy in neglecting to pay over the money collected on the execution, the deputy directed the attorney to apply the proceeds of the notes in discharge of his liability for the money so collected.

Held, upon the report of an auditor, appointed to assess the damages in the action against the high sheriff, in the absence of any further evidence of an agreement between the deputy and the attorney relative to the application of the proceeds of the notes, that they could not be considered as received by the attorney on account of the liability of the deputy for the money so collected by him; that the promise of the attorney, contained in the receipt, did not imply that he was to account for the proceeds by applying them in discharge of that liability; that the deputy had no right to direct such application, and that the plaintiff was entitled to have the damages assessed for the whole amount which the deputy had collected upon the execution.

Bufford *v.* Johnson.

Extension of commission on insolvent estate.

It is the duty of the Judge of Probate to extend a commission of insolvency, whenever, upon application to him by any creditor within the two years limited by statute as the extent of the commission, it shall appear that such creditor has failed to present his claim to the commissioner for allowance through accident, mistake or misfortune; unless the report has previously been accepted and the estate distributed to the creditors, or unless the claim not presented be so trifling in amount as not to warrant the expense necessarily to be incurred; provided there has been no want of reasonable diligence in making the application for such extension.

State *v.* Wade.

License law — Negativing provisoes to statutes.

It is not necessary that an indictment under the act of July, 1855, for the unlicensed sale of intoxicating liquor, should negative the provisions of the 23d statute of that act, exempting from its operation sales to agents within three months from the time it took effect, and sales by one agent to another at any time.

It is necessary that an indictment for a statute offence should negative an exception to the statute, only when the exception is so contained in the enacting clause thereof as to be descriptive of the offence.

December Term, 1856. *Strafford.*

State v. Langley.

Descriptive averments in an indictment — Surplusage.

An allegation in an indictment which describes, defines, qualifies, or limits a matter material to be charged, is a descriptive averment, and must be proved as laid.

An appointment by the court, of a commissioner to take the testimony in a suit for divorce under the rule of court, which requires all the testimony to be used on the hearing of the libel to be taken before a commissioner so appointed, does not confer power upon the commissioner to administer the oath to the witness whose deposition is taken by him, nor does it define or in any way qualify his authority to administer the oath.

In an indictment for perjury assigned in the testimony contained in such deposition, it was alleged that the oath was administered by the commissioner on a day specified, he "then being a justice of the peace, and duly authorized to administer said oath," and that the commissioner was appointed by the court, at a term thereof which commenced on a day subsequent to that specified as the day on which the oath was administered.

Held, that the latter allegation was not descriptive, and might be rejected as surplusage.

State v. Gove. State v. Card.

Descriptive words in an indictment — When good at common law — Intent.

Where the words of a statute are descriptive of an offence, the indictment must follow the language of the statute, and expressly charge the defendant with the commission of the described offence in the words of the statute, or their equivalents; or it will be defective.

Where a particular intent is essential to constitute a crime, that intent must be distinctly alleged in the indictment.

Where a statute makes criminal the doing of an act "*wilfully and maliciously*," it is not sufficient for the indictment to charge that it was done "*feloniously and unlawfully*," or "*feloniously, unlawfully and wilfully*," these latter terms not being synonymous, equivalent, of the same legal import, or substantially the same, as "*wilfully and maliciously.*"

An objection to an indictment that would have been fatal on demurrer, is equally fatal upon a motion in arrest of judgment.

Where the offence described in the indictment is punishable at common law only, although the indictment avers it to have been committed against the form of the statute, the conclusion may be rejected as surplusage, and the indictment be good at common law.

But, where what was a misdemeanor only at common law, is made punishable as a felony by statute, or where the statute declares a common law offence, committed under peculiar circumstances, and with a particular intent, not necessarily included in the original offence, punishable in a different manner from what it would be without such circumstances and intent, an indictment for the statute offence, bad as such for insufficient description, will not be good at common law.

State *v.* M'Duffie.

Dogs protected under the statute for wilful and malicious injury.

Dogs are the subject of property, and, when kept with collars around their necks, having their owners names engraven thereon as required by statute, are as fully within the purview of the statute against wilful and malicious injury to personal estate, as any other species of personal property.

An indictment lies under that statute, for the wilful and malicious destruction of a dog, alleged to have been worth fifty dollars, and to have had around its neck a brass collar with its owner's name engraved thereon.

December Term, 1856. *Cheshire.*

State *v.* Marvin.

Indictment for adultery — Evidence of marriage — Nolle prosequi as to one count — Evidence.

In an indictment for adultery containing two counts for two separate offences, if a *nolle prosequi* is entered as to one count, and the trial proceeds on the other, this is no ground to set aside a verdict found against the defendant, nor to arrest the judgment.

The statute providing that a copy of the town clerk's record shall be evidence of a marriage, does not make the copy evidence of a higher degree than direct proof of the marriage by witnesses; and such proof by witnesses is admissible on trial of an indictment for adultery, without first showing that a copy of the record cannot be produced.

The husband of the woman, with whom the defendant was alleged to have committed the crime, was a witness for the prosecution, and testified to the fact of the adultery. He testifying

without objection, that he cohabited with his wife for some five years after their marriage, and down to near the time when the offence was alleged to have been committed; and further stated that he did not live with her at the trial; to this last statement the defendant objected, but it was held to have been properly admitted.

The offence was stated on the part of the prosecution to have been committed in a barn belonging to the defendant, and the evidence went to show that the parties met there sundry times shortly before and about the time when the crime was charged to have been committed; a witness testifying that he saw them there on one occasion, and at another time, saw the woman near the barn, when there was chaff on her shawl like hay chaff, and she looked as if she had been rolling in hay; that he did not then see the defendant there, nor see from what direction the woman came. To this evidence of the appearance of the woman's dress the defendant objected, but it was held to be competent.

Twitchel *v.* Smith.

Matters open on an appeal from the decree of a judge of probate.

Upon an appeal from the decree of a judge of probate, the appellant is restricted to such matters as are specified in his reasons for appeal; but the appellee is not thus confined, but may himself show error in the decree and have it corrected.

Where, upon an appeal from the decree of a judge of probate in the settlement of a guardian's account; it appeared upon an examination of the account, that the guardian, who was the appellee, had been twice charged with the sum of $75.77, it was *held*, that the error might be corrected on the appeal, and the decree of the Probate Court was made to conform to the correction.

Daily *v.* Blake.

Evidence.

Where the defendant made a contract with D. & H., who were in partnership, to do his blacksmith work, and to pay for the same in specific articles, and afterwards D. & H. dissolved partnership, and D. continued to work in the shop as formerly, and the defendant, without a knowledge of a dissolution of the firm, or any notice of a termination of the contract, came and had work done.

Held, in an action by D. for the work done by him, that these facts were competent to go to the jury as tending to show a defence.

Dickinson *v.* Lovell.

Issue and judgment in replevin — Officer's return — Evidence.

In replevin, the defendant pleaded property in B. a third person, that B. was indebted to R., and that defendant as deputy sheriff,

attached the goods as the property of B. upon a writ founded on said debt, in favor of R. The plaintiff replied, (1) Property in himself; (2) that B. was not indebted to R., and (3) that the defendant did not attach the property on a writ in favor of R. against B., and issues were joined on these replications.

It was *held*, that the only material issue was upon the property of the plaintiff; that the allegations that the goods were the property of B., that B. owed R., and that defendant attached the goods on R.'s writ, were merely inducement, and not traversable; and that the issues joined on these matters were immaterial: that on these pleadings, the defendant would be at common law entitled to judgment for a return, without an avowry, or conusance, or any suggestion of that nature; that in this State he is entitled to a judgment for his damages, instead of a return, and that those damages are not necessarily limited to the value of the property and interest.

The return of an officer of an attachment made by him is conclusive evidence of that fact against everybody.

Where a witness is asked, whether he had ever seen B., and if so, to state when and where he had seen him; and he replied, that he had seen him once at the store of W., in Boston. He could not state the time. And he afterwards deposed, that said B. purchased goods of W. at several different times, it was *held*, that the court could not decide, that the witness had no competent knowledge of the facts he stated. That, that question must be left to the jury.

Winchester *v.* Hees.

Deed — Construction.

Under the description of "a certain dwelling-house, being the same in which I now live, and is the same owned by E. W," contained in a deed of conveyance, the land in the rear of the buildings used by E. W., and the succeeding owners and occupiers, in connection with the house for the purpose of a wood-yard, and essential to its convenient enjoyment as a dwelling, passes as incident to and part of the house.

Wood *v.* Adams.

Action for joining in marriage without legal certificate — Requirement of statute of 1854.

By the act of July 14, 1854, a clergyman or magistrate is not required to receive more than a single certificate from a single town clerk, of the entry of the intention of marriage by the parties desiring to enter into the marriage state, in order to protect himself against prosecution, whether the parties reside in the same or dif-

ferent towns; nor is he responsible for the correctness of the facts set forth in such certificate.

If the certificate received by him be genuine, and specifies the date of the entry of the notice of intention of marriage between the parties in the office of the clerk issuing it, the requirements of the statute are complied with.

The principal, if not the sole object, of the provisions of the act of July 14, 1854, in relation to the entry of notice of intention of marriage by parties, being to secure within the state an authentic record of the names, residences and ages of those citizens of this State contracting matrimony, whether in any case such entry is required to be made, save in the office of a single town, or city clerk, *quære.*

December Term, 1856. *Belknap.*

M'Dougall *v.* Calef et al.

Guarantor, when entitled to notice — Construction of guaranty.

Where the undertaking by a guarantor is absolute, notice is unnecessary; but where it is collateral merely, notice must be given within a reasonable time, otherwise the guarantor will be discharged, unless he is not prejudiced by the want of notice.

The defendants gave to the plaintiff a guaranty stating in substance that they were acquainted with the principal, and, reposing confidence in his honesty, would hold themselves bound for such goods as the plaintiff should entrust him with, provided he should sell them and abscond with the money, or squander them.

Held, that this was a conditional guaranty, and that the defendants were entitled to notice.

Held, also, that the defendants were not chargeable unless it should appear that the principal absconded with the money, or squandered the goods; and that neglect to pay a balance did not show a squandering.

Benson *v.* Ela.

Sheriff neglecting to levy execution — Bond of indemnity — Interest of witness — Priority of creditors.

In an action against a deputy sheriff for neglecting to levy an execution, evidence that the party in interest, having authority to control the execution and direct the levy, delivered to the defendant a bond of indemnity against liability on account of levying, and also ten dollars in money towards his fees for making it, which bond and money the defendant received without objection, and at the same time requested the defendant to levy the execution on

certain property designated, is competent to be submitted to the jury as evidence of the fact that the execution was placed in the hands of the defendant for service.

Where the bond and money were delivered to the defendant, he was informed that the property on which it was to be levied was certain machinery in a mill near the dwelling-house of the execution creditor, but at the distance of some miles from the dwelling of the defendant, and that, if when he came to make the levy he would call upon the creditor at his house, he would point out to the officer the particular articles on which he wished the levy to be made.

Held, that this was a sufficient designation of the property, unless it appeared that the defendant called at the house of the creditor for the purpose of having a more specific designation, and he failed to make it.

A witness testified upon the trial that he did not know whether he was or not interested in the suit; that he owned the note on which the execution was founded, at the time when it was put in suit, and down to the time of his testifying; that the suit on the note was brought by his direction, in the plaintiff's name as indorsee, with his consent, against the principal upon the note alone, one Merrill being his surety thereon; that the witness had agreed with Merrill that he might manage the suit on the note and the judgment and execution which might be recovered therein in his own way, as the witness looked to Merrill alone for his pay, and was sure of it from him; that Merrill had taken the direction and control of the suit on the note and of the execution which issued therein; had instituted this suit in the plaintiff's name by the consent of the witness, and under the authority which he had from the plaintiff to use his name in any way that might be deemed necessary in the case, and had agreed to conduct this suit at his own expense.

Held, that, upon these facts, the witness had no interest to exclude him from testifying.

The creditor of a late copartnership who declares against the surviving copartner as upon a debt contracted by him severally, and not against him as such survivor, is not entitled to have his execution levied upon the property which belonged to the copartnership, and came to the hands of the debtor by reason of his survivorship, in preference to other general creditors having earlier attachments upon the property. And a creditor of the survivor for a debt contracted by him severally, having declared against his debtor as surviving partner, and as upon the joint debt of himself and late copartner, and obtained judgment thereon, is entitled to such preference in the same manner as if his debt had been contracted by the copartnership. As to the different classes of creditors having conflicting claims to the property under their respective attachments, and as between them and the officer levying the execution, the judgments in such cases are conclusive.

LIVINGSTON *v.* PENDERGAST ET AL.

Adverse possession of land — Possession by widow and infant heirs.

The sale by the administrator of a solvent estate of the land of his intestate under a license from the Court of Probate, gives no title or color of title to the purchaser, unless it be accompanied by a deed of conveyance from the administrator.

Evidence that the administrator entered into the land of his intestate upon a sale under his license, at which the land was struck off to himself; that he considered himself the owner; had the land surveyed, and the lines around it marked; let a neighbor mow over a part of it, and cut three or four white pine timber trees upon it during an occupation of about three years, is not evidence of that open notorious and exclusive possession marked by definite boundaries which is necessary to render it adverse to the title of the legal owners.

A widow, who having a right of dower in the land of her deceased husband, continues to live upon it with her infant children, the heirs at law, or enters after his decease and takes possession, living upon it with the infant heirs, is presumed in law to continue or take the possession for her own benefit in reference to her dower only, and for the benefit of the infant heirs as their natural guardian, and the same presumption arises although the infants have another guardian by appointment of the Court of Probate.

If the widow contract a second marriage, the joint possession of herself and second husband, while the infant heirs continue to live with them upon the land, is presumed to be for the same purposes as if she had remained sole, her second husband claiming no other rights in the land than such as he may be entitled to exercise in the right of his wife by virtue of the marriage.

The possession of the mother while sole, and the joint possession of herself and second husband, who claims no other rights than such as he acquired by the marriage, can never be adverse to the legal title of the infant heirs, whatever may be the circumstances attending the possession, unless they amount to an actual ouster of the heirs, and in fact exclude them from the land.

The administrator of an estate administered as solvent, at a sale of the land of the intestate under license from the Court of Probate, bid off the land himself, entered upon and kept possession for about three years, without deed or writing except the memorandum made at the auction as the account of sale, considering himself the owner and exercising the usual acts of ownership. By agreement between himself, the legal guardian of the infant heirs, and the widow their mother, with the assent of her husband, she having contracted a second marriage, the administrator conveyed the land by a deed in his private capacity, and not as administrator, or by virtue of the license and sale to the infant heirs, in consideration of the indebt-

edness of the estate to the mother for the support of the infants under seven years of age, and of a sum which had been agreed to be paid to her by the administrator with the consent of the legal guardian in lieu of dower, it being intended and understood that the deed given to the infants should be for the use of the mother, and that the land should belong to her. The mother and her husband, with the infant heirs, as a part of their family, entered after the conveyance from the administrator, occupied the land, claiming it as hers; built a house upon it, and exercised ownership during the life of the husband, and the widow subsequently during the minority of the heirs.

Held, that neither the joint possession by the husband and wife, nor the possession by the widow subsequent to his death, were adverse to the title of the heirs at law; that if a trust resulted to the wife upon the conveyance from the administrator to the infants, the possession of the *cestui que trust* while sole, and the joint possession of herself and husband claiming only in her right as *cestui que trust*, could not be considered as adverse to the legal title of the heirs as trustees under the deed; that the deed from the administrator was in confirmation of the title of the infant grantees as heirs at law, and that the mother could not be permitted to set up the supposed equitable title under the deed to qualify the joint possession of herself and husband, or her subsequent sole possession, so as to render it adverse to the title of the infants as heirs at law.

Notes of Cases in New York.

Superior Court of the City of New York. General Term, December, 1856.

Present: Duer, Slosson, and Woodruff, JJ.

Beavers *v.* Lane & Maugam.

Who is a bonâ fide purchaser?

Trover for taking and detaining a quantity of oats. The defendants claimed to be *bonâ fide* purchasers through one Cox, the plaintiff's vendee.

Woodruff, J. — It is not enough to constitute a *bonâ fide* purchaser, within the meaning of the rule which protects *bonâ fide* purchasers, that he entered into an executory contract of purchase, which if not performed would leave him in the same condition as if no such contract had been made. It has been said, it is true, that a mere contract for the sale of goods, where nothing remains

to be done by the seller before making delivery, transfers the right of property, although the price has not been paid, nor the thing sold delivered to the purchaser. (*Oliphant* v. *Baker*, 5 Denio, 382). This may be true as between buyer and seller for many or all purposes, and yet a defrauded vendor of the latter may have a paramount right, against which such a contract of sale will avail nothing. The general rule that one shall not profit by another's fraud, forbids such a result. But in the present case, something yet remained to be done by the seller, at the very time when this action was commenced, and when the defendants received notice of the plaintiff's claim. They had purchased the oats which were in the boat of Cox, "more or less," at 51½ cents per bushel. Measurement was necessary, and neither measurement nor delivery was completed, when the sheriff interrupted its progress, and the defendants received notice of the plaintiff's claim. They had paid nothing. They had not obtained possession. If the oats were taken from them by the plaintiff, they would be in no worse position than they were before the contract of purchase was made. They would simply have failed to realize a profit, which if Cox had title, they might perhaps have realized from the transaction.

The rule may safely be stated, that no one is a *bonâ fide* purchaser in the sense now proposed, who has neither advanced money nor property, nor incurred liabilities, upon the faith of his vendor's apparent title, and without notice of any defect therein; and by liabilities is meant those obligations, from which the retaking by the former and true owner, will not of itself relieve him. If after such retaking, he will be in all respects in the same condition, as if he had made no such contract of purchase, he is not a *bonâ fide* purchaser, having title paramount to that of the true owner.

Here it cannot be said by the court, that the defendants are proved to have paid any money, or incurred any such liability. Upon the facts now appearing, if the plaintiff be the owner as between him and Cox, the defendants can never be required to pay him for the oats, and they have given no property or security, negotiable or otherwise therefor.

F. B. Cutting, for plaintiff.

W. M. Evarts, for defendants.

General Term, January, 1857.

Present: Hoffman, Slosson, and Woodruff, JJ.

Fiedler v. The New York Insurance Company.

Constructive total loss, how ascertained — Surveyor's fees — Does a total loss of the vessel always carry with it a total loss of freight?

The plaintiff brought two actions, one upon a policy of insurance upon the barque Helen M. Fiedler, valued in the policy at

$16,000, and insured for $8,000; the other upon a freight policy. The claim in both actions was for a total loss.

Held, that in making an estimate of the extent of the injury which warrants an abandonment, surveyor's fees are not to be included. When a partial loss to a vessel alone, or a loss to which she as well as cargo and freight are to contribute, is adjusted, surveyor's fees should be charged to underwriters. They have resulted from the peril and the damage. The case is different when the question to be solved is, what would it cost to replace the vessel in the same situation she was in before the injury, deducting one third new for old, as usual. The result of that inquiry is the test amount, without the expenses of ascertaining it. The moiety rule is itself an arbitrary one, and not a favorite of the law. The admission of items to make up the sum should be rigidly limited to what the rule exacts. (Decision in the case of *Hall* v. *The Ocean Insurance Company*, 21 Pick. 472, commented upon and approved).

Held, *further*, that even though there had been a constructive total loss of the vessel, the action for a total loss upon the freight policy could not be maintained, for the reason that the cargo was delivered and the freight earned, before the abandonment. (See the decision of the House of Lords, in the case of the *Scottish Marine Ins. Co.* v. *Turner*, 20 Eng. L. & Eq. Rep. 24.)

F. B. Cutting & D. Lord, for plaintiff.

Robert Emmet, for defendants.

Intelligence and Miscellany.

A CRIMINAL TRIAL IN FRANCE.

The Abbé Verger, who stabbed the archbishop of Paris, was brought to trial in that city before the chief president of the court, M. Delangle, and in the presence of a vast number of spectators of high degree. We give an extract from the report of the trial, that our readers may compare the forms and mode of proceeding with those which are used in England and America, and judge whether the continental method is on the whole preferable and more likely to attain the ends of justice.

After the reading of the indictment, the trial proceeded as follows:

Names of the witnesses subpœnaed were called over. They were twenty-one in number, of whom three were summoned on behalf of the prisoner. All preliminary forms having been thus complied with, the president was about, according to French practice, to interrogate the prisoner touching the circumstances of the crime, but on his commencing with the usual order, "Prisoner, stand up," Verger, in a calm tone, and with as cool and collected a manner as if he had been a counsel making a motion in

court, said — M. le President, if you will permit me, I have an observation to make.

The President. — You may speak.

The Prisoner. — Gentlemen, nineteen centuries ago a great word was spoken by a man who was more than a man; his name was Jesus Christ. This word was, "Pax vobis! Pax omnibus!" And another man whom you love and venerate, and whom I love and venerate with you, repeated this word when he said, "L'Empire c'est la paix!" Now we must understand the sense of this great word —

The President. — Excuse me: you seem to be going into your defence, and this is not the time.

The Prisoner. — The empire of the sabre is war; the moral empire is peace. A few minutes ago, gentlemen, you heard the registrar read the circumstantial details of the event for which I am responsible before God, before society, and in mine own eyes. The members of the *parquet* (public prosecutor's office) have succeeded in procuring the most precise information against me. I have had no similar advantages. Since my imprisonment I have, it is true, fabricated some formidable arms, but the arms which I had prepared before going to prison were also formidable, and I have them not. Among them are papers which will show what my enemies are. Those enemies are the members of the Papal Inquisition. Several of these most precious papers have been furnished me by my honorable counsel, but I have not got all of them. I come now to the main point. I wish to speak to you of my faith, for a priest without faith is not a priest. I require all my papers in my prison; they would be in as safe custody there as I am myself. I desire to tell you that moral violence has been used towards me. I desired to call sixty witnesses, and I am refused. I have written on the subject to the minister of justice, begging him to submit my letter to the Emperor. The prisoner then read the letter, which was to the following effect:

"Monsieur le Ministre: My request to have my witnesses is obstinately refused. I therefore refuse with no less tenacity, to make my statement. I will not answer the questions which the President may put to me. I will denounce the fact to the jury and to public opinion. I do not fear my enemies. Let them come all. If what I ask is refused, I will march nobly, gravely, resolutely to the guillotine. Oh, human justice, Divine justice will punish thee! All this is serious, excessively serious. I demand to furnish my proofs. They are of two kinds — written and verbal. The written proofs are my papers — the verbal my witnesses. I ask you to put off the trial." The prisoner concluded by calling on the president to postpone the trial for a week.

The President. — Gentlemen of the jury, it is important that you should know what the facts are. The prisoner's appeal to the Court of Cassation having been rejected on Thursday, I went to see him, and asked him whether it would be necessary for the purposes of his defence that the trial should be postponed beyond the time fixed. He appeared to reflect a little, but ultimately he said that he would be ready for to-day. Is that true, Verger?

The Prisoner. — There is both truth and falsehood in what you say, M. le President. You assured me that my defence would be free. I added, "and with respect to all the circumstances." Now I desire to prove what my enemies, the members of the Inquisition, have done.

The President. — It must be thoroughly understood that all that we have to do with here are the facts relative to the murder of the archbishop, and that the prisoner wishes to call witnesses to insult or incriminate certain members of the clergy — witnesses whose testimony would throw no light

whatever upon the present case. The Procureur-General was quite right in refusing to have them called. Verger, consult your counsel, and he will tell you that your requisition to have these witnesses called is an abuse of the right of defence.

The Prisoner. — I have the honor to answer your observation by a letter which I received at half-past five o'clock yesterday evening from my honorable defender. It is an order of the minister which allows me to subpœna my witnesses, but at my own expense. It was then too late to summon my sixty witnesses. M. Nogent, moreover, told me that he had not received the list. The prisoner, in support of this statement, read the following note from his counsel, M. Nogent Saint Laurens: "Up to five o'clock this evening, M. Nogent had not received the list of witnesses that M. Verger desires to call. Moreover, it is now too late."

M. Nogent Saint Laurens said that he had, in the course of his duty, communicated with the prisoner, and asked for a list of his witnesses. He did not receive his answer till last evening, and in the answer the prisoner said he desired to call a great many witnesses at his own risk and peril. He (M. Nogent) had then written the four lines which had been read, to say that it was too late.

The Procureur-General. — (M. Vaisse). — We must not attach more importance to this incident than it deserves. Who will believe that the prisoner has been refused anything necessary for his defence? We refused to hear his witnesses when we knew of a scandalous libel in which he accuses the most eminent members of the clergy. His list of witnesses is but an abominable libel ——

The Prisoner — (in a loud voice). — Read it, then; read it.

The Procureur-General. — It is an abominable libel — a farrago of calumnies.

The Prisoner — (furiously). — Read, read, read.

The President. — You spoke, just now, of Christ.

The Prisoner. — Yes, M. le President. I appeal again to his justice, his truth, his goodness, his mercy.

The President. — Enough.

The Procureur-General. — After having assassinated the archbishop of Paris, this man would have us permit him to strike with the dagger of calumny the most eminent members of the French clergy, and he asks for time to study his insults.

The Prisoner — (loudly). — The defence is not free.

The President. — What do you mean by the defence not being free?

The Prisoner. — What is liberty but the exemption from ——

The President. — It is license, doubtless.

The Prisoner. — No, sir, it is the exemption from physical bonds, from bolts and gendarmes; moral bonds are interrogatories such as you would put to me.

The President. — What do you mean? Is not your defence free?

The Prisoner. — It is not free! it is not free! The defence is not free! My life has been passed with the persons that I wish to call.

The President. — Come now, once for all, are you willing to go on with the proceedings?

The Prisoner — (vehemently). — I desire that my witnesses should be heard.

M. Nogent Saint Laurens rose and begged his client to calm himself. He would reserve to himself the right to call for further witnesses if, in the course of the trial, he should see occasion to do so.

The Prisoner — (interruptingly). — My honorable defender, I cannot

concede to you what I refuse to the court. I maintain my demand, and I desire that it may be executed.

The court here retired to deliberate upon the prisoner's application to postpone the trial, and returned in a few minutes, when the president announced that the application was rejected.

The President. — Verger, rise and answer my questions.

The Prisoner — (resolutely). — I will answer nothing. It is moral violence.

The President. — Sit down, then. Usher, call the first witness.

Cormout, a sergeant de ville, deposed that he was in the church of Saint-Etienne-du-Mont when the archbishop was murdered. He saw the prisoner stab the archbishop. He assisted in arresting the man, and heard him cry, "*A bas les deésses!*"

The Prisoner. — I have been ill-treated. I have a reproach to make against this witness. I was horribly beaten and kicked. Such an arrest is not moral. [Laughter.]

The president here pointed to the bloody poniard, and asked the prisoner whether he recognized it?

The Prisoner. — Yes, sir; that is the instrument I used.

Guillot, a huissier, heard the prisoner cry, "*A bas les deésses!*" and saw him brandish the poniard.

Madame Lainé, the woman who lets out chairs in the church, saw the prisoner sitting on the third row. The archbishop gave his benediction, and then she saw the prisoner strike him. She thought at first that he had given a blow with his fist.

The Prisoner. — The evidence of this lady is of no importance. I must remark, that according to Jesus Christ no money ought to be paid in a church, but she made me pay ten centimes for the chair. I hope the money may profit her soul. [Sensation]

M. Picant, a cutler, sold the poniard produced to the prisoner, on the 11th of December. The price paid was 15f. He bought at the same time a penknife for 2f. 50c.

The president asked the prisoner where he got the money with which he bought the poniard, and whether it was not part of what the archbishop gave him?

The Prisoner. — I received nothing from him. The money was part of the proceeds of furniture which I sold.

The curé of St. Severin deposed that after vespers on Christmas Day, he received a letter from a person totally unknown to him, containing extraordinary diatribes against one of his sermons. The letter was signed Verger, Rue Racine. Witness sent there, but found the writer was no longer living in the house.

The President. — Verger, what did you say?

The Prisoner. — I have to say that I am an enemy of the present clergy, just as Jesus Christ was the enemy of the Pharisees. I am an enemy to all that is pharisaical. I demand that the letter be read.

The Procureur. — That is unnecessary.

The Prisoner. — Spectators, see how they refuse me everything — physical violence, moral violence.

M. Legentil proved the circumstances relating to the prisoner's conduct at Meaux.

The Prisoner. — I defended with all my might a man who was unjustly condemned by the Court of Assize for poisoning.

The President. — You alone possess the supreme science. You pretend to know that men are innocent who are condemned by the justice of their country.

The Prisoner — (emphatically). — Yes, yes. Read my *Colin Maillard*,

(a pamphlet written by the prisoner.) People, (turning to the audience,) ask to have that read. Public, ask my brother for the book, he will give it you.

The Vicar-general of Meaux stated the facts which led to the interdiction of the prisoner.

The Prisoner — (to the witness). — You are a scoundrel.

The president exhorted the prisoner to be moderate.

The Prisoner. — You see here but a dead man, a poniard, a scaffold and a guillotine; I see something else; I have labored fifteen years for this result, and you will not hear me a single day.

The president here read a letter written by Verger a year ago, in which he said that he alone had premeditated and executed the murder of the archbishop.

On being asked why he wrote that letter, the prisoner made a long, rambling statement, to the effect that he was in despair, and had been persecuted by the Paris inquisition.

The President. — Your doctrine is abominable, above all in the mouth of a priest.

The Prisoner. — A lie, a lie! Anathema president?

The Abbé Millaud, master of the seminary of Notre Damé des Champs, deposed that bishop Dupanloup had formed a bad opinion of the prisoner, and had told him to get rid of him as soon as he could. The Abbé also said that the prisoner had received a sum of sixty francs to buy books, and had not duly applied the money.

The prisoner vehemently repudiated the charge of stealing the sixty francs. He said that he had bought the works of Molière, Rousseau and Pascal, which were proscribed by the inquisition, but had not otherwise misapplied the money.

M. Montandom, a French protestant clergyman, stated that Verger came to him complaining of his superiors, and said he wished to become a Protestant. Witness told him that a change of religion was a very serious matter, and that dissatisfaction with his superiors was not sufficient cause for such a step.

The Prisoner. — After having seen this gentleman, I renounced both Catholics and Protestants, because I became convinced that they are both in error.

The Abbé Sibon, Vicar of St. Germain l'Auxerrois, had known Verger from a child, when he was learning his catechism. He was zealous and intelligent. When he was at Auteuil he represented to me that he was in great distress, and I asked charitable people at Neuilly to give him linen and money. He received the gifts without thanking me. The curé of St. Germain l'Auxerrois afterwards lent him eight hundred francs.

The Prisoner. — Out of the poor-box.

The President. — You now add infamy to violence.

The Witness. — I received a letter from Verger, in which he threatened to dishonor me, as well as the manes of a person who was dear to me, and whom I had lost.

The Prisoner. — You are a pagan to say manes. That is paganism — do you hear?

The prisoner here said that the witness had not stated what they both knew very well about the bishop of Evreux ——

The President. — Stop! stop!

The Prisoner — [raising his voice]. — Nor about the bishop of Soissons. [Movement of indignation in the audience.]

The President. — Hold your tongue, and sit down.

The Prisoner. — Audience, you see I am not free. Gentlemen of the jury, I am not free.

The President. — You are not free to slander, and you shall not.

The Abbé Legrand, curé of St. Germain l'Auxerrois, deposed to Verger being the author of several libellous writings against him. He had employed him in a secondary capacity.

The Prisoner. — Say at the Tuilleries.

The President. — Have patience.

The president here read a letter from the prisoner asking pardon of the curé for his faults.

At this stage of the proceedings the prisoner became more violent than ever. He declared that only garbled letters were read against him, and loudly demanded that everything should be read. He sat down and rose up repeatedly, with furious gestures, and called the curé a "Miserable! miserable!"

The President. — Prisoner, by virtue of my discretionary power, I shall send you out of court, and proceed with the trial in your absence.

The Prisoner. — *La parole ou la guillotine.* I am afraid of nothing. I will brave death as I brave this tribunal. You are a set of wretches. I fear God alone.

The president ordered the gendarmes to take the prisoner away. He resisted, and cried, "Help, people; people, defend me!" A cry here arose from the audience, "No, no; you are an assassin, an assassin;" and the prisoner was dragged away from the bar amidst a scene such as was probably never before witnessed in a court of justice. The court then adjourned for a short time.

The trial then proceeded in the prisoner's absence. The defence was insanity, and one would suppose that the prisoner's conduct at the trial might afford considerable ground for such a defence. The only medical witness was called by the prosecution, and said that he did not consider the prisoner mad, but only *very dangerous.*

The jury after a short consultation pronounced him guilty, and he appealed to the Court of Cassation upon the law points, as we should say, that his witnesses ought to have been admitted to testify, and that the statute allowing him a certain time to prepare for trial was not complied with. It appears that the counsel for the government can admit or reject the prisoner's witnesses, subject to the revision of the court, without calling them to the stand, and that in this case they were all rejected. It is impossible to read the report and doubt that the prisoner's state of mind was far from sane, and why this fact was not brought out in evidence is a mystery which we are unable to solve. The prisoner was defended by an advocate of great distinction, who seems to have done all that he could for his client, excepting to prepare his case on the evidence. No doubt he had many difficulties to contend with.

The last steamer brings news that the judgment was affirmed by the higher court; and the prisoner has been executed.

Restoration of Judge Davis. — Judge Woodbury Davis, of Maine, whose removal from office, by address, for a judicial decision made in the course of his duty, was noticed at length in our journal, has been restored. It seems that the legislature which removed him, also abolished his office, probably for the purpose of clinching the removal. It had this effect for a time, for the Supreme Court, finding that there was no question between different claimants for the office, did not think it necessary to pass upon the general questions involved in the action of the other branches of the government. But it also left an easy way of redress; for the present legislature happening to differ in politics from their predecessors, renewed the office, and judge Davis has been appointed to fill it. Nobody seems to have gained much by the see-saw excepting the judge, who, we suppose, starts now on a full term.

A CREDULOUS WITNESS. — It is said that Tom Corwin, as he is familarly called, was once trying a case in which he was opposed to the late Mr. Wirt, when the latter tried a somewhat novel mode of discrediting the evidence of Mr. Corwin's chief witness, on whose accuracy and discrimination everything turned, by showing that he was a person of astonishing credulity.

Wirt. — Have you read Robinson Crusoe?

Witness. — Yes.

Wirt. — Do you believe it all?

Witness. — Well, yes, Squire, I don't know but what I do.

The same answer was returned as to Gulliver's Travels, and several other works of fiction, Corwin all the while fidgetting and getting very hot. Presently, Mr. Wirt considering the man entirely flattened out, resigned him with a bland smile.

Mr. C. said he had only one question, and put it.

C. — Have you read Wirt's Life of Patrick Henry?

Witness. — Yes.

C. — Do you believe it all?

Witness. — Why no, Squire, I can't quite go that.

Obituary Notice.

BARON ALDERSON. — Sir Edward Hall Alderson, died at his house in London, January 27, 1857. He was born in 1787, and was the son of a barrister, who was also recorder of Norwich. He was educated at Cambridge, where he was graduated in 1809, and obtained the rare distinction of carrying off the highest honors both in the classics and mathematics. He was admitted to the bar in 1811, and went the Northern circuit. Like many other men who have arrived at distinction, Mr. Alderson employed himself for a time as reporter, editing with Mr. Barnewall, the books which bear their names. In 1830, Mr. Alderson was made a judge of the Court of Common Pleas, and was transferred in 1834 to a seat on the Exchequer bench, which he held at the time of his death. In this long judicial course, Baron Alderson has earned the character of a learned and upright as well as courteous magistrate. Many of his judgments are marked by great learning and legal discrimination, and he was esteemed second only to Baron Parke among his many able associates.

Notices of New Publications.

COCKBURN'S MEMORIALS.*

THIS is about as readable a book as ordinarily falls to the lot of a lawyer, of a Saturday afternoon. It is a pleasant rambling sketch of men and things which one, who rose to the first rank in his profession, knew and saw during some forty years of the most eventful period of the history of Edinburgh.

It brings upon the stage the principal actors in these scenes from their

* Memorials of his Time. By HENRY COCKBURN. New York: D. Appleton & Co. 1856.

various callings in life, — the professor's chair, the judge's bench, the pulpit, the bar, the field of politics, and the study of the author, and the reviewer, and shows them to the reader as they appeared to the eye of a keen and shrewd observer.

One advantage that it has over so many works of similar pretensions is that it comes from the pen of a writer who associated as an equal and companion with those who appear upon his pages. We find neither toadyism nor sycophancy in the characters he draws. And if his strong political partialities sometimes give a tinge to his pictures, we cannot help sympathizing in the feelings which prompt them. He lived to see Edinburgh go through the phases which converted her old, crowded, filthy streets, the abodes of rich and poor, high and low in almost undistinguished proximity, into two cities, the old and new, where the picturesqueness and historic interest of the one, is rivalled by the beauty and art and social attractions which adorn the other. But it is only of a few of the men and the changes which are connected with the profession of the law, that we have space to speak here.

Henry, or as he is commonly called, Lord Cockburn, was born October 26, 1779. His father was a member of the Scottish bar, and at one time a baron of the exchequer, an office which long since disappeared. After running the gauntlet of the schools as they then existed, in which the brutality of the master was met, as might have been expected, by coarseness, rudeness and vulgarity on the part of the pupil, he entered the university in 1793. Brougham was among the companions and associates of his school days. In 1800 he entered the faculty of advocates. The position and influence of a body of men, educated, connected with the best families in Scotland, and united by an *esprit du corps* like the lawyers of Edinburgh, could not fail to exert a commanding influence. They were, indeed, during the period covered by these memoirs, the leading and predominating class in that city. But the chances for success of any individual member of it, depended, in no small degree, at the time Cockburn entered it, upon the favor with which he was viewed by the dominant political leaders, or rather leader (Lord Melville, jocularly called "Henry the Ninth,") of the day. Melville was a high tory, Cockburn always a staunch whig, and the manner in which he gradually surmounted this obstacle to success, is a pleasant episode in the history of his life as a lawyer.

The writer gives a graphic sketch of the parliament house, the place where the courts of Edinburgh were held, as it was when he came to the bar. "The den called the inner house, then held the whole fifteen judges. It was a low, square-like room, not, I think, above from thirty to forty feet wide." "The inner house was so cased in venerable dirt, that it is impossible to say whether it had ever been painted, but it was all of a dark brownish hue. There was a gallery over the bar, and so low that a barrister in a phrenzy was in danger of hitting it. A huge fire place stood behind the lord president's chair, with one of the stone jambs cracked, and several of the bars of the large grate broken. That grate was always at least half full of dust. It probably had never been completely cleared since the institution of the court in the sixteenth century." "Dismal though this hole was, the old fellows who had been bred there, never looked so well anywhere else, and deeply did they growl at the spirit of innovation which drove them from their accustomed haunt."

Of the court there is scarcely a more flattering picture than of the room in which they sat. "Of the fifteen judges of those days, some of course were heads without name." Of these he speaks of the "classical bearing, good conversation, excellent suppers, and ingenious, though unsound, metaphysics" of Lord Monboddo. He would not sit on the same bench with

President Dundas, but took his seat at the clerk's table. "But the giant of the bench was Braxfield. His very name makes the people start yet; strong built and dark, with rough eyebrows, powerful eyes, threatening lips, and a low growling voice, he was like a formidable blacksmith." Though a man of strong powers of mind, he was a vulgar, illiterate, hard-hearted wretch, and, as the author calls him, "the Jeffreys of Scotland." A single anecdote will be sufficient to illustrate the character of the man and the judge. "Mr. Horner, (the father of Francis,) who was one of the jurors in Muir's case, told me that when he was passing, as was often done then, behind the bench to get into the box, Braxfield, who knew him, whispered, 'Come awa, Maister Horner, come awa', and help us to hang one o' thae daamned scoondrels.' He died at the age of seventy-eight, in 1799."

The absurdities of another of these judges, lord Eskgrove, occupy a half dozen pages in the work before us; and some of them we should be glad to transcribe, that our readers might see of what materials courts are sometimes constituted, but it would swell this notice to an unreasonable length. One illustration may suffice. "I heard him, in condemning a tailor to death for murdering a soldier by stabbing him, aggravate the offence thus, 'and not only did you murder him, whereby he was berea-ved of his life, but you did thrust, or push, or pierce, or project, or propel the le-thall weapon through the belly-band of his regimen-tal breeches, which were his majes-ty's!' He was put at the head of the court when at the age of seventy-six, and died at the age of eighty, in 1804." We hear much, of late, of "the higher law" that rides over statute and constitution in politics, and the work before us furnishes a somewhat more remarkable illustration of such a principle as it was applied by one of the Scotch judges, lord Hermand, in a case before him. "But then we are told that there is a statute against all this. A statute? What's a statute? Words, mere words. And am I to be tied down by words? No, my laards. I go by the law of *right reason*." He draws the character of the mind of Lord Meadowbank with great discrimination, whom a vast fund of varied learning and knowledge combined as it was with an inveterate love of speculation and metaphysical discussion, rendered remarkable as a judge, in which place "he had more pleasure in inventing ingenious reasons for being wrong than in being quietly right."

Of the bar of that day, whose names the writer mentions, and of whom the world outside of Scotland have heard somewhat, were Jeffrey, Brougham, Cranstoun, and Horner, besides Henry Erskine, Clerk and Gillies, Blair, Hope and Dundas. The latter three were in the tory interest. To those should be added the name of Cockburn. Never was there an era in the history of the Scottish bar, or perhaps any other, when there was a greater amount of accomplished talent, or of public service in literature, in policy and in law, than was then concentrated in Edinburgh. The principal part of the practice at the bar, however, was in a few hands, and several of the persons above named shared in it only sparingly. The Commentaries of Bell on Mercantile Law, produced about this time, was a work of such high merit as to give it a place among the standard authorities of the law. And this was followed by a volume of reports of the decisions of the court, by the same author, the first ever published by a voluntary reporter, although threatened by the court, who endeavored in vain to deter him from the undertaking. The failure of Jeffrey to obtain the place of reporter of the court, in 1801, led to the starting of the "Edinburgh Review," the first number of which was published in October, 1802.

It was not until 1816, that the trial of civil causes by jury was introduced into the courts of Scotland. "The jury court" was opened, and on the

22d of January tried its first case. "We had long been verging towards the introduction of civil juries. The experiment was keenly resisted, chiefly by the older judges, or by the established obstructors of change." The court consisted of three judges, William Adam, Lord Pitmilly, and Lord Meadowbank, of each of whom the author gives a brief sketch. To those who are familiar with the working of the common law, it is curious to mark the slow progress which the system of jury trials made in public favor in Scotland. A great outcry was raised against the idea of requiring an *unanimity* on the part of the jurors. "The religious objection which resolved into the perjury (as it was called), of the minority sacrificing its conscience to the conscience of the majority, was the one that made the deepest impression on the Scotch mind," and the author adds, "it is odd that of all the tribes of mankind, the habit has been tolerated in England alone. I believe it to be absurd, and that whether a bare majority ought to be allowed to decide or not, always requiring unanimity, is nonsense. Experience has not in the least diminished our Scotch aversion to it." Such a declaration from a sound and liberal lawyer, and a learned and experienced judge, illustrates how strongly and deeply the forms of the law become incorporated into the public mind as a part of jurisprudence itself, and how justice itself becomes identified with the formulas through which its ends are attained.

The book is full of amusing anecdotes, some of which have already been transferred to our pages, in a former number. Others which we had marked for extract, we regret to find we have not room for. It is only fair to add that the English critics deny the genuineness of some of the stories which profess to unfold the state of political affairs and prejudices in Scotland at the beginning of this century.

Of the author's personal history, little can be gathered from the work before us. From other sources we learn that he attained distinguished eminence at the bar, and that of one of his arguments, that in defence of James Stuart, Sir James Mackintosh declared in the House of Commons that "it had not been surpassed by any effort in the whole range of ancient or modern forensic eloquence." This is certainly high praise, and it appears that he was quite as acceptable as a popular speaker as in his forensic efforts. He was promoted to the bench in 1834, and held office till his death in 1855, though he added nothing to his reputation thereby. His social qualities were of a very high order, and his enjoyment of convivial life was keen and unalloyed. We hope that the success of a work like this will encourage other eminent lawyers in our own country as well as abroad, to give us in as readable a form, the memorials of their own times.

REPORTS OF CASES ARGUED AND DETERMINED IN THE SUPREME JUDICIAL COURT OF MASSACHUSETTS. By HORACE GRAY, Jr. Vol. III. Boston: Little, Brown, & Co. 1857. pp. 647.

This volume contains a few more pages of reading matter, but not so many cases as the second volume of the series; a difference caused by the greater length of some of the opinions. Three of the cases here reported, from their bearing upon important interests, excited during their progress much curiosity and discussion outside of the profession. We refer to the cases of the Federal Street Church, (p. 1), the Brattle Square Church, (p. 142), and the Divinity School of Harvard College, (p. 280). The first of these cases turned upon the construction of a deed made in 1735 to the prudential committee of the church, taken in connection with such facts bearing upon the gift or purchase as could be proved at this late day. The

habendum of the deed was to the committee and their successors, in trust for the use of the congregation, according to the tenure and after the same manner as the Church of Scotland holds the lands whereon the meeting-houses are erected. The decision was that the conveyance created a private trust only, for the congregation, and not a public charity, and the congregation having been incorporated more than fifty years before suit brought, as a congregational society, and having held the property in question ever since, it was further held too late to inquire whether such incorporation and change of worship were a breach of the trust. Other points of legal and historical interest were discussed at the bar and by the court, and the whole case will well repay perusal.

The case of the church in Brattle Square involved the construction of a devise and its legality. The land was given to the deacons of the church "upon this express condition and limitation, that is to say, that the minister or eldest minister of said church shall constantly reside and dwell in said house, during such time as he is minister of said church; and in case the same is not improved for this use only, I then declare this bequest to be void and of no force, and order that said house and land then revert to my estate, and I give the same to my nephew A. and his heirs forever." It was held that these words created not a condition but a conditional limitation, and that as the contingent event might not happen within the time allowed by law, it was void, and that the deacons took the absolute fee discharged of the condition. A case from 12 Mass. is cited by Bigelow, J. in his opinion, which bears a strong analogy to the one under consideration, and was decided in the same way.

The third of the cases above mentioned decides that the court have no power to withdraw funds given by individuals to the Corporation of Harvard College for the support of a divinity school attached to the college, and intrust them to an independent board of trustees not connected with the college, on the ground that such transfer would benefit both institutions. The court considered the character of the trustees, and their position in connection with education, to be of the essence of the trust, and that they could not, like ordinary trustees, resign their office. A fourth case was much noticed by the bar, partly because the plaintiff was a lawyer, and partly from the points raised and decided. This is *Hilliard* v. *Richardson*, (p. 349), which denies the authority of the often quoted and often doubted case of *Bush* v. *Steinman*, 1 Bos. & Pul. 404, and decides that the owner of land who has contracted with a builder, for a specific price, to alter and repair the buildings on the land, is not liable to a third person who is injured by reason of boards to be used on the building being left in the highway in front of the land by a teamster employed by the builder.

We have no time to notice specially any more of the many important decisions in this volume, but refer our readers to *Goddard* v. *Smithett*, p. 116, *Holland* v. *Cruft*, p. 162, *Com'th.* v. *Uprichard*, p. 434, *Com'th.* v. *Ray*, p. 441, *Com'th.* v. *Hawkins*, p. 463, *Hiss* v. *Bartlett*, p. 468, and *Coggill* v. *Hartford & New Haven R. R.* p. 515. This volume is as well edited as its predecessors in the series, and this is praise enough. Upon the delicate and difficult question how much of the arguments of counsel are to be reported, Mr. Gray appears to be guided by a general rule to supply whatever of the points and authorities relied on may be necessary to give a complete view of the case on both sides, and especially to show the positions taken by the losing side. We do not think that any better principle can be laid down, and we do not doubt that it is applied by the learned reporter with care and judgment.

We have been furnished by the reporter with a memorandum of the fol-

lowing errata, accidently not corrected before the printing of the first edition.

p. 24, line 9 from bottom, "respondents" should be "relators."
p. 75, line 9 from top, "bond for a lease" should be "proper lease."
p. 88, line 13 from top, "shown" should be "known."
p. 92, line 4 of abstract, "from" should be "form."
p. 483, line 9, "of the defendant" should be "by the defendant."

The second clause of the abstract of *Pettee* v. *Prout*, (502), should read thus: One, to whom a note payable to one named or bearer is transferred before it becomes due, takes it subject to no equities or right of set-off which the maker would have against the original payee.

REPORTS OF CASES ARGUED AND DETERMINED IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE FIRST CIRCUIT. 1854 – 1856. By B. R. CURTIS, the Presiding Judge. Volume II. Boston: Little, Brown, & Co. 1857.

Judge Curtis may be called a reformer and benefactor in the reporting department of the Supreme Court of the United States. His edition of the reports of that court, reduces fifty-seven volumes to eighteen, and a cost of two hundred and seventeen dollars to a cost of fifty-four dollars, and gives to the judicial decisions of the national government a circulation and distribution they could otherwise never have attained.

The second volume of his reports of decisions in his circuit has just been issued, in a manner creditable to him and to the publishers. On the appearance of the first volume of these reports, this journal made some strictures upon the details of its execution. We are glad to find no occasion for repeating them. This volume is edited with care, and printed with neatness and liberality. The decisions show even more of the fulness of learning and careful reasoning which usually mark the opinions of the learned judge.

The volume contains a little over six hundred pages of reported matter, the number of cases reported being about seventy. These cases embrace the usual interesting variety which marks the jurisdiction of federal circuit courts, cases of patents and copy-rights, of salvage, collision, freight, insurance, charter-parties, bills of lading, wages and marine torts, causes arising under the revenue and criminal laws of the United States, occasional decisions upon the local laws, upon constitutional questions, and upon questions of the conflict of laws arising out of our complex system.

Judge Curtis never gives the arguments, or even the points or authorities of counsel. We think it is well in leading cases, to give, at the discretion of the reporter, the points and authorities at least of the losing side. On this head our views are given in the notice of Mr. Gray's third volume, as well as on former occasions, and we will not repeat them, but only add that Judge Curtis errs on the right side, and that entire omission is much better than the grievious burdens of full length arguments.

A TREATISE ON THE LAW OF CONTRACTS AND RIGHTS AND LIABILITIES EX CONTRACTU. By C. G. ADDISON, Esq. of the Inner Temple, Barrister at Law. Second American from the fourth English Edition. With Notes and References to American Decisions, by EDWARD INGERSOLL. Philadelphia: Robert H. Small. 1857. pp. 1264.

Of the three elaborate and learned treatises on contracts which now claim the patronage of the profession, the one before us was the first in order of time, and long since acquired the character of a careful and accurate digest of the English cases upon this extensive branch of the law. As a book of reference it is most valuable, though as a treatise inferior in

simplicity and scientific arrangement to the admirable work of Professor Parsons.

From a somewhat hasty examination, we are inclined to believe that the American Notes refer to most of the cases, and give the book a good American finish; but the learned editor seems to have been considerably indebted for them to Mr. Parsons's book.

REPORTS OF PRACTICE CASES, DETERMINED IN THE COURTS OF THE STATE OF NEW YORK. By ABBOTT BROTHERS, Counsellors at Law. Volume III. New York: John S. Voorhies. 1856–57.

These very useful reports contain cases decided in all the higher courts of the State of New York, and are published in numbers, thus giving very early information to the profession. The digest also refers not only to these reports, but to all decisions on points of practice contained in other volumes. The volume is very well edited and printed.

THE BANKING SYSTEM OF THE STATE OF NEW YORK. With Notes and References to Adjudged Cases, including also an Account of the New York Clearing House. By JOHN CLEAVELAND, Counsellor at Law. New York: John Voorhies. 1857.

This volume contains a great deal of information both curious and useful, being no less than a complete account of the present and past banking systems of New York, with the statutes and decisions of the courts of that State, bearing upon the subject.

BOOKS RECEIVED.

CRIMINAL INSANE: INSANE TRANSGRESSORS AND INSANE CONVICTS. By EDWARD JARVIS, M. D., of Dorchester, Mass. Utica, New York. 1857.

A DIGEST OF THE DECISIONS OF THE COURTS OF ENGLAND, contained in the English Law and Equity Reports, from the first volume to the thirty-first, inclusive. By CHAUNCEY SMITH, Counsellor at Law. Boston: Little, Brown, & Co. 1857.

THE ARGUMENT OF MR. EDWARD N. DICKERSON, with his Notes and Explanations; the Charge of Judge Nelson, and the Verdict of the Jury in the case of *Sickels* v. *Borden*. Tried in the Circuit Court of the United States, in the City of New York, November Term, 1856. New York: John S. Voorhies. 1856.

SUPREME COURT OF LOUISIANA. *William C. Auld*, Appellant, v. *J. B. Wolton*, Appellee. Argument of Randall Hunt, for the Appellee.

TRIAL OF CHARLES B. HUNTINGTON, FOR FORGERY. Principal Defence: Insanity. Prepared for publication by The Defendant's Counsel, from full Stenographic Notes taken by Messrs. Roberts and Warburton, Law Reporters. New York: John S. Voorhies. 1857.

THE ARGUMENTS OF GERRIT SMITH and DAVID J. MITCHELL, and THE CHARGE OF JUSTICE MASON, IN A TRIAL FOR MURDER. New York: John A. Gray, Printer. 1857.

A REVIEW OF THE DECISIONS OF THE SUPREME COURT OF THE STATE OF ILLINOIS UPON THE QUESTION OF THE CREATION AND CONTINUED EXISTENCE OF THE RECORDER'S COURT OF THE CITY OF CHICAGO. By W. T. BURGESS. Chicago: Democratic Press, Book & Job Printing Establishment. 1857.

LEGAL REFORM. An Address to the Graduating Class of the Law School of the University of Albany. Delivered March 27, 1856. By ALFRED CONKLING. Published by the Class. Albany: W. C. Little & Co. 1856.

Insolvents in Massachusetts.

Name of Insolvent.	Residence.	Commencement of Proceedings.	Name of Judge.
Aldrich, Elliot (*a*)	Adams,	Jan. 7, 1857	Henry S. Briggs.
Alcott, Sidney S.	Boston,	" 1,	Isaac Ames.
Ames, Samuel A.	Boston,	" 29,	Isaac Ames.
Baker, Wells S.	New Bedford,	" 27,	Joshua C. Stone.
Bartlett, Sylvanus P (*b*)	Boston,	" 23,	Isaac Ames.
Batcheldor, Oliver F.	South Danvers,	" 16,	Henry B. Fernald.
Batcheller, Lucius E. (*c*)	Boston,	" 27,	Isaac Ames.
Billings, Dwight	Hardwick,	" 31,	Alexander H. Bullock.
Bowman, Robert,	Lawrence,	" 21,	Henry B. Fernald.
Brown & Allen's Piano Forte Company.	Boston,	" 13,	Isaac Ames.
Cary, Quincy A.	Worcester,	" 10,	Alexander H. Bullock.
Chase, Joseph	New Bedford,	" 21,	Joshua C Stone.
Chesley, James	Cambridge,	" 8,	Isaac Ames.
Childs, Edward D.	Somerville,	" 30,	Isaac Ames.
Clark, Charles B.	Concord,	" 16,	Isaac Ames.
Colby, Josiah (*b*)	Newton,	" 23,	Isaac Ames.
Cook, Albert H. (*d*)	Boston,	" 28,	Isaac Ames.
Davis, Moses T. (*c*)	Boston,	" 27,	Isaac Ames.
Dean, Zephaniah W.	New Bedford,	" 8,	Joshua C. Stone.
Doane, George A.	Charlestown,	" 27,	L. J. Fletcher.
Farnum, Benjamin	Chelsea,	" 1,	Isaac Ames.
Green, Prion	Boston,	" 17,	Isaac Ames.
Harrison, William	Boston,	" 13,	Isaac Ames.
Hoffmann, C.	Roxbury,	" 8,	Francis Hilliard.
Howe, Joseph J. (*b*)	Roxbury,	" 23,	Isaac Ames.
Howland, A. Sydney (*e*)	New Bedford,	" 13,	Joshua C. Stone.
Howland, James G.	New Bedford,	" 23,	Joshua C. Stone.
Kendall, William	Royalston,	" 3,	L. J. Fletcher.
Kimball, Edward R. (*b*)	Boston,	" 23,	Isaac Ames.
Lambert, Thomas R.	Charlestown	" 21,	L. J. Fletcher.
McGilvray, David F. (*b*)	Boston,	" 23,	Isaac Ames.
Merrill, Alfred J. (*f*)	Lynn,	" 30,	Henry B. Fernald.
Mildram, Oren (*f*)	Lynn,	" 30,	Henry B. Fernald.
Miller, Joseph R.	Cambridge,	" 27,	Isaac Ames.
Moore, George	Marlboro',	" 15,	L. J. Fletcher.
Page, Christopher	South Reading,	" 6,	L. J. Fletcher.
Perkins, James (*g*)	Boston,	" 24,	Isaac Ames.
Phillips, Jerome	Adams,	" 19,	Henry S. Briggs.
Pitt, John W. (*a*)	Adams,	" 7,	Henry S. Briggs.
Plummer, Sewell (*d*)	Boston,	" 28,	Isaac Ames.
Prouty, Lorenzo D.	West Brookfield,	" 17,	Alexander H. Bullock.
Read, Joseph	Boston,	" 21,	Isaac Ames.
Sanford, Squire (*e*)	New Bedford,	" 13,	Joshua C. Stone.
Sawyer & Smith	Templeton,	" 19,	Alexander H. Bullock.
Simpson, J. Putnam (*g*)	Boston,	" 24,	Isaac Ames.
Sturtevant, Josiah	New Bedford,	" 16,	Joshua C. Stone.
Taylor, James	Newton,	" 8,	L. J. Fletcher.
Travis, William A.	Holliston,	" 30,	Isaac Ames.
Vinton, Charles A.	South Reading,	" 27,	Isaac Ames.
Wall, William A.	New Bedford,	" 21,	Joshua C. Stone.
White, Calvin L.	Roxbury,	" 7,	Francis Hilliard.
Wilcox, Charles H.	Uxbridge,	" 30,	Alexander H. Bullock.
Wyman, William A. (*b*)	Boston,	" 23,	Isaac Ames.

(*a*) Pitt & Aldrich, " and as individuals.
(*b*) David F. Gilvray & Co.
(*c*) Batcheller & Davis.
(*d*) Cook & Plummer.
(*e*) Sandford & Howland.
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(*g*) Perkins & Simpson.